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APPENDIX

Supreme Court, U.S.
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70-9

# In the Supreme Court

OF THE

# United States

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OCTOBER TERM 1970

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No. ~~582~~

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THOMAS C. LYNCH, et al., *Appellants*

vs.

ROBERT O. GILMORE, JR., et al., *Appellees*

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**On Appeal from the United States District Court for the Northern District of California**

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**Jurisdictional Statement Filed August 22, 1970**
**Jurisdiction Postponed February 22, 1971.**

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**DOCKET ENTRIES**

No. 45878
(Consolidated with Nos. 46297-46298, 46299, 45749, 46496, 47111, 50918)
(3 Judge Ct.—Duniway, Wollenberg & Zirpoli)
(Assigned to Judge Wollenberg)

Title of Case

ROBERT O. GILMORE and INMATES OF SAN QUENTIN STATE PRISON, etc.

*Plaintiffs,*

vs.

PEOPLE OF THE STATE OF CALIFORNIA, et al.,

*Defendants.*

*Basis of Action:* Complaint for injunctive relief to prevent confiscation destruction of legal materials

Attorneys

*For Plaintiff*: A-67442 TAMAL
Mr. John Wahl, (*Apptd.*)
1255 Post St. Suite 1128,
S.F. 9; Tel. 771-5950

*For Defendant:*
Atty. Genrl. State Calif.
6000 State Bldg. S.F.
Marshall W. Krause,
Amer. Civil Liberties Union
503 Market St. S.F. 5
Amicus Curiae, behalf of pltf.

Plaintiff's Account

Date

10-27-66—Filing Fee—(Received 15.00)
OCT 31 1966—CD 1-33—(Disbursed 15.00)

Defendant's Account

6-25-70—Appeal—(Received 5.00)
JUN 26 1970—CD 1-103—(Disbursed 5.00)

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| Date | Filings-Proceedings |
|---|---|
| 1966 | |
| Oct. 27 | 1—Filed complaint issued summons (Folder to ACW) |
| Nov. 7 | 2—Filed copy of ltr., dated Nov. 4, 1966 from petnr. to U.S. Marshal. |
| Nov. 10 | 3—Filed order allowing petitioner to prosecute his complaint, without prepayment of fees. (Wollenberg) Copies to pltff. & Marshal. |
| Nov. 29 | 4—Filed Amendment to complaint. |
| Dec. 7 | 5—Filed "supplemental pleading/and amendments" by pltff. |
| Dec. 12 | 6—Filed summons, on return, exec. |
| Dec. 12 | 7—Filed order ext. time 30 days for defts. to answer or otherwise move with respect to pltff's. complt. (Wollenberg) |
| Dec 21 | 8—Filed affidavit of pltff. to enter judgment by default. (to ACW) |

| Date | Filings-Proceedings |
|---|---|
| 1967 | |
| Jan. 1—9 | Filed order consolidating actions Nos. 45878, 46297, 46298 & 46299 for all future proceedings, allowing all pltffs. to proceed in forma pauperis; denying mo. for temp. restrain order and appointing Mr. John Wahl as atty to represent plaintiffs. (Sweigert) |
| Jan. 11—10 | Filed notice by defts. of motion to dismiss, Feb. 6, 1967, 10 AM, with supporting papers attached. |
| Jan. 13—11 | Filed order directing Clerk to make copies of all papers filed or hereinafter filed by petnrs. as requested by Mr. Wahl, without charge to petnrs. or their Court appointed counsel. (Sweigert) |
| Jan. 24—12 | Filed stip. & order cont. mo. to dismiss to Feb. 27, 1967 at 10 A.M. (Carter) |
| Feb. 7—13 | Filed notice by pltff's atty of change of address to 1255 Post St. Suite 1128, S.F. |
| Feb. 10—14 | Filed stip. & order cont. mo. to dismiss to Mar. 20, 1967, 10 A.M. (Carter) |
| Mar. 10—15 | Filed request by pltffs. for temp. restraining order. |
| Mar. 10—16 | Filed affidavit of John Eshleman Wahl supporting request for temp. restrain. order. |
| Mar. 10—17 | Filed request by pltffs. for temp. restrain. order. |
| Mar. 10—18 | Filed affidavit of John Eshleman Wahl supporting request for temp. restrain. order. |

| Date | Filings-Proceedings |
|---|---|

1967

Mar. 10—19—Filed Temporary Restraining order, issued 4:23 P.M. Copies mailed attys. (Harris)

Mar. 10—Ord., aft. hrg. pltffs' appli. temp. restrain. order as to legal material granted & pltffs' appli. for temp. restrain. order as to communications denied; fur. ord. pltffs' mo. for prelim. injunc. be set for hrg. Mar. 27, 1967. (Harris)

Mar. 14—20—Filed motion by pltffs. for preliminary injunction and for convening of 3 Judge Court, with supporting memo, affdavits and exhibits attached.

Mar. 15—21—Filed notice by pltffs. of hrg. mo. for prelim. injunc., March 27, 1967, 10 A.M.

Mar 15—22—Filed affidavit of service of mo. for prelim. injunc.

Mar. 16—23—Filed stip. & order regarding mo. to dismiss & mo. for prelim. injunc. (3/27/67) (Wollenberg)

Mar. 20—24—Filed memo by pltff. opposing mo. to dismiss.

Mar. 23—25—Filed affidavit of service of pltffs' opposition to mo. to dismiss.

Mar. 24—26—Filed motion by American Civil Liberties Union of Northern California to participate as Amicus Curiae on behalf of plaintiffs, with supporting papers attached. (to ACW)

Mar. 27—Ord. aft. hrg., pltff. to amend complt and matter cont'd to Aprl. 10, 1967 for fur. hearing. (Wollenberg)

| Date | Filings-Proceedings |
|---|---|
| 1967 | |

Apr. 3—27—Filed Amended Complaint, and request for temp. restraining order. (hrg. 4/4/67 WTS)

Apr. 4—Ord., aft. hrg., pltffs' mo. for temp. restrain. order denied; defts to produce any documents which are to be used in this Court. (Sweigert)

Apr. 10—Ordered motion for preliminary injunction & for 3 Judge Court & motion to dismiss cont to April 17, 1967. (Harris)

Apr. 12—28—Filed order allowing John E. Wahl to take custody of papers lodged with the clerk to be returned before 9:30 a.m. April 17, 1967. (Sweigert)

Apr. 14—29—Filed memo by defts. opposing mo. for convening of 3 Judge District Court.

Apr. 17—Ord., aft. hrg. counsel, fur. hrg. on pltff's. mos. for prelim. injunc., for 3 judge Court & to dismiss, cont'd. to Apr. 21, 1967, 10 A.M. (Wollenberg)

Apr. 20—30—Filed memo by defts. opposing request for temp. restraining order.

Apr. 21—Ord., aft. arguments, the petn. for T.R.O. be granted in part; defts have 20 days from Apr. 24, 1967 to respond to amended complt. & consolidated cases are assigned to Judge Wollenberg for further proceedings; pltff's. counsel to prepare order; fur. ord. cont'd. to May 26, 1967 for fur. hrg. on mo. for 3 Judge Court. (Wollenberg)

| Date | Filings-Proceedings |
|---|---|
| 1967 | |

Apr. 25—31—Filed temp. restrain. order; defts. have 20 addtl days to file response to amdned. complt; mo. to convene 3 judg. Ct. sched. on May 26, 1967, 10 A.M.; pltff's. mo. prelim. injunc. & deft's. mo. to dismiss cont'd. to a time after defts file a responsive pleading to pltffs' amended complt. (Wollenberg)

May 8—32—Filed order renewing & ext. temp. restraining order until 6 o'clock p.m. on May 18, 1967. (Wollenberg)

May 16—33—Filed stip. & order ext. time for defts. to file motions in response to pltffs' amended complt., to May 17, 1967. (Burke)

May 17—34—Filed notice by defts. of motion to strike, to dismiss and for summary judgment, Jun. 12, 1967, 10 A.M., with supporting papers attached.

May 18—35—Filed affidavit of William A. Young.

May 18—36—Filed affidavit of Joseph William Wade.

May 19—Filed order consolidating actions Nos. 45749, 46496 & 47111 with action No. 45878. (In 45749) (Wollenberg)

May 25—37—Filed affidavit & declaration of Martin J. Winthal. (to ACW)

May 26—Ord. that petnr's. time to answer the resp's mo. to dismiss, to strike & sum. judg. noticed for June 12 is granted and that submission of petnr's. mo. for a 3 Judge Court cont'd. to June 12, 1967. (Wollenberg)

| Date | Filings-Proceedings |
|---|---|
| 1967 | |
| Jun. 7 | 38—Filed memo by pltffs opposing defts' mos. to dismiss, for sum. judg. & to strike. |
| Jun. 12 | 39—Filed declaration and affidavit of George R. Guay. (to ACW) |
| Jun. 12 | —Ord. mo. for a 3 Judge Court submitted and denied as per order this day signed & filed; pltff's. mo. to proceed on appeal of the denial of the mo. for a 3 judge court in forma pauperis, granted; Fur. Ord. the remainder of the pltff's. & deft's mos. are to go off cal. to be renoticed upon the results of appeal herein. (Wollenberg) |
| Jun. 12 | 40—Filed order denying pltffs' mo. for 3 Judge Court. Copies mailed to counsel for petnr. & A.G. (Wollenberg) |
| Jun. 22 | 41—Filed pltffs amended motion for preliminary injunction, with supporting memo & various affidavits & papers attached. |
| Jun. 22 | 42—Filed order granting mo. of pltff. for leave to appeal in forma pauperis, without prepayment of fees & costs or the costs of a stenographic transcript or printing the record. (Wollenberg) |
| Jun. 22 | 43—Filed notice of appeal by plaintiffs. |
| July 6 | 44—Filed amended order denying pltff's motion for the convening of a three-Judge Court. (Wollenberg) |
| July 11 | 45—Filed stip. re designation of record on appeal. |
| July 17 | 46—Filed notice of appeal by pltffs. |
| July 21 | 47—Filed designation by pltff. of record on appeal. |

| Date | Filings-Proceedings |
|---|---|

1967

July 25—48—Filed notice by pltffs. of withdrawal of mo. for change of venue in case No. 45878.

Aug. 1—Made, Hand Carried Record on Appeal.

Aug. 1—49—Filed receipt from CCA for record on appeal in this case and cases Nos. 46297, 46298, 46299, 47015, 45749, 47111 & 46495.

Aug. 11—50—Filed request by pltffs. for temporary restraining order.

Aug. 11—51—Filed request by pltffs' atty to sever action No. 46495, Ruchell Magee from consol. actions and request that John Eshleman Wahl be withdrawn as counsel for said plaintiff.

Aug. 14—52—Filed affidavit of Grant M. Salzman.

Aug. 14—53—Filed affidavit of Kenneth Miranda.

Aug. 14—54—4:15 P.M., Filed Temporary Restraining Order to expire on Aug. 24, 1967, 2:00 P.M. unless extended; pltffs to file amended notice of motion for prelim. injunc. by Aug. 24, 1967. (Wollenberg)

Aug. 24—55—Filed amendment by pltff. to mo. for prelim. injunc.

Sept. 7—56—Filed stip. & ord. cont. temp. restraining order issued Aug. 14, 67 be cont. for sixty days. (Wollenberg)

Oct. 10—57—Filed ord. denying request for severance and request of atty. to withdraw as counsel for the pltf. in case 46495. (Wollenberg)

Oct. 13—58—Filed affidavit of service to withdraw as counsel in case 46495.

Oct. 21—59—Filed affid of Robert O. Gilmore Jr.

| Date | Filings-Proceedings |
|---|---|

**1969**

Mar. 19—60—Filed certified copy of opinion & judgment reversing the U.S. Dist. Court & remanding for further proceeding looking toward the convening of a 3 Judge Court (Chambers Merrill & Ely) To Judge ACW.

Mar. 19—61—Filed order denying certiorari (Supreme Court of United States)

Apr. 14—62—Filed order convening 3 Judge Court, consisting of Judges Ben C. Duniway, Albert C. Wollenberg & Alfonso J. Zirpoli; the same judges are appointed to serve in Dist. Court cases Nos. 46297, 46298, 46299, 47015, 47111, 45749, 48232, 48351, 48352, 48353, 48354, 48355, 48361, 48362, 48607, 48858, 48974, 49073, 49090, 49856, 49942, 49943, 50024, 50775 and 50855. (Chambers, CJ)

Jun. 30—63—Filed copy of ltr. from petitioner Calvin W. Jackson to Clerk USDC dated June 27, 69 "Adinquirdum".

Sept. 26—Filed ORD consolidating 50918 with 45878, 46297, 46298, 46299 (IN 50918)

**1970**

Feb. 9—64—Filed Stip of settled statement of issues.

Feb. 18—65—Filed Stip to request for hrg for Feb. 23, 1970.

Mar. 2—66—Filed Clerk's notice that on April 30, 1970, 1:30 P.M. for hrg. Should the hrg not be completed it will be contd to May 1, 1970 at 1:30 P.M. Clerk.

Apr. 27—67—Filed Amicus Curiae Memorandum of points and authorities in support of Pltffs, copy to Duniway, Wollenberg & Zirpoli.

| Date | Filings-Proceedings |
|---|---|

1970

Apr. 27—68—Filed Deft's memorandum of law upon issues submitted to the 3 Judge Court by Stipulation filed Feb. 9-70, copy to Duniway, Wollenberg & Zirpoli.

Apr. 27—69—Filed Pltff's Brief in support of motion filed by Pltff's in opposition to motions filed by Deft's, copy to Duniway, Wollenberg, & Zirpoli.

Apr. 30—Three Judge hearing before the Hon. Ben Duniway, Hon. Alfonso J. Zirpoli and Hon. Albert C. Wollenberg. John Wahl appearing for the Pltff's and Robert R. Granucci appearing for the Deft's State of Calif. 10 days to submit requested information in reference to the law books & matter to then stand submitted.

May 28—70—Filed Order granting Relief (Duniway, Wollenberg & Zirpoli)

Jun. 25—71—Filed notice of Appeal by Deft's to the Supreme Court of the United States.

Jun. 26—Mailed Clerk's notice of filing appeal.

Jul. 28—72—Filed appli. by defts. for stay that portion of order of May 26, 1970 which orders defts to formulate new or amended regulations. (to ACW)

Jul. 29—73—Filed motion to Intervene by Neil Edward Darrow a Pltff (unnotice)

Aug. 5—Made Mailed Record on Appeal to Supreme Court of U. S. by Certified Mail No. 224356.

Aug. 13—74—Filed Return Receipt from Supreme Court of U.S. of Certificate of Clerk to Record on Appeal.

United States District Court for the
Northern District of California

Civil Nos. 45878, 46297, 46298, 46299

John Van Geldern, Thomas Francis Boyle, Jr., Irving G. Robertson, Robert G. Beattie, and Robert O. Gilmore, Jr., et al., for themselves and on behalf of all indigent inmates of California penal institutions, a class of persons too numerous to make practical the appearance of all members of the class in this action,

Plaintiffs,

vs.

Thomas C. Lynch, Attorney General, Doris H. Maier, Deputy Attorney General, Doe One through Doe Ten, Deputies or Assistants or Employees or Agents of the Attorney General of California, Fred Dickson, Chairman, Adult Authority, Doe Eleven through Doe Twenty, Members, Adult Authority, or Employees or Agents of the California Adult Authority, Walter Dunbar, Director of Corrections, Richard A. McGee, Administrator, A. L. Oliver, Warden, Lawrence Wilson, Warden, Doe Twenty-One through Doe Thirty, Wardens or Superintendents of California penal institutions, Doe Thirty-One through Doe Fifty, Members, Employees, Agents or Privies of the California Department of Corrections, Leona Ragle, Mail-handler, Does Fifty-One through Sixty, Mail-handlers or Mail-handling officials, A. George Oakley, Prison Official, Doe Sixty-One through Doe Eighty, and People of the State of California,

Defendants.

# AMENDED COMPLAINT FOR MONEY DAMAGES, DECLARATORY AND INJUNCTIVE RELIEF; REQUEST FOR TEMPORARY RESTRAINING ORDER

*Jurisdiction*

The action arises under the Constitution of the United States, Article Four, Section Two; the Constitution of the United States, Article Six; the Fourteenth Amendment to the Constitution of the United States, Section One; the Act of 1948, 62 Stat. 964 as amended, U.S.C., Title 28, §§2201, 2202; the Act of 1948, 62 Stat. 968 as amended, U.S.C., Title 28, §§2281, 2284; R.S. §1977, U.S.C., Title 42, §1981; R.S. §1979, U.S.C., Title 42, §1983; R.S. §1980, U.S.C., Title 42, §1985; R.S. §1981, U.S.C., Title 42, §1986; R.S. §722, U.S.C., Title 42, §1988; as hereinafter more fully appears. The jurisdiction of this court is founded on those sections and on 28 U.S.C. §§1331, 1343. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000.00.

*Statement of Claim*

Plaintiffs bring this action for themselves and on behalf of all similarly situated prisoners, indigent inmates of the penal institutions of the State of California, a class which has so many members that it is impractical to bring them all before this court. The plaintiffs adequately represent this class. Plaintiffs request leave of court to substitute in and add plaintiffs as necessary in this action in order to maintain adequate class representation.

During all times herein mentioned plaintiffs were and are prisoners of the State of California, confined as inmates of penal institutions owned, operated, managed, and controlled by that State. During all the

times herein mentioned plaintiffs were and are citizens of the United States of America and of the State of California. During all the times herein mentioned plaintiffs were and are indigent.

The individual defendants have committed separate acts, or have engaged in continuing concerted action, all designed to hinder, delay, and make ineffectual plaintiffs' exercise of the rights of due process of law and equal protection of the law, as those rights concern access to the courts, and which rights are guaranteed by the Fourteenth Amendment to the Constitution of the United States, Section One, and, with regard to access to the courts, by R.S. §1977, U.S.C., Title 42, §1981.

Insofar as the individual defendants have engaged in the complained of concerted action, said concerted action was in part carried out under color of a claim of acting pursuant to State statute, ordinance, regulation, custom, or usage; or these individual defendants have had knowledge that the separate acts committed complained of, or the concerted action complained of, were about to be committed, and these individual defendants, having power to prevent or aid in preventing the commission of same, neglected or refused to do so.

The concerted action complained of amounts to a conspiracy to intentionally and purposefully discriminatorily deprive plaintiffs, as individuals and as members of the class they represent in this action, of rights to due process of law and equal protection of the laws as those rights have to do with access to the courts.

The separate acts committed complained of were committed under color of a claim of acting pursuant to State statute, ordinance, regulation, custom, or usage.

The individual defendants threaten to repeat indefinitely the separate acts or concerted action complained of, and the knowing neglect or refusal to prevent such separate acts or concerted action while having power to prevent the same, and thus the individual defendants threaten irreparable damage and injury to the plaintiffs and the class they represent.

The defendant People of the State of California are the ultimate owners, operators, managers, and controllers of the penal institutions of the State, and have power to prevent the wrongful conduct complained of herein, but will not do so unless commanded by the order of this court.

Specific acts or concerted action complained of, and knowing neglect in preventing or refusal to prevent specific acts or concerted action complained of, include the following:

The individual defendants have separately or in concert attempted to prohibit prisoner access, or severely limit prisoner access, to lawbooks, legal opinions, and other materials necessary for the effective preparation of legal petitions, arguments, and pleadings. The attempts have, in some cases, been successful. The purpose of these attempts has been to hinder, delay, and make ineffectual prisoner, and plaintiffs', access to the courts. Defendants have carried out said attempts by promulgating and attempting to enforce

regulations which severely limit the numbers of, and titles of, lawbooks and related books which can be stocked in libraries of penal institutions, and which can be possessed by inmates, and said regulations have even directed that books in excess of the amounts and titles or categories authorized, shall be destroyed. Defendants' regulations complained of are, in part, set forth in previous complaints filed in this action, and are incorporated herein by reference. Defendants have also carried out said attempts by deliberately delaying delivery of mail, put into defendant's custody by prisoners, including the plaintiffs Boyle and Gilmore, but not limited to those plaintiffs, addressed to courts or attorneys, and in some instances defendants have confiscated or refused to mail communications put into their hands by prisoners, including the plaintiffs Boyle and Gilmore, and including a co-plaintiff on No. 45878 (originally brought by plaintiff Gilmore and other inmates of San Quentin Prison), Commodore William Moss. Defendants have also deliberately delayed delivering mail to prisoners, which mail has been sent to the prisoners by courts and attorneys, causing, in some cases, appeals to be affirmed because prisoners have not been notified of the necessity for filing papers by a certain date, or because prisoners have not been given necessary transcripts, mailed to them, in time to prepare an appeal.

Defendants have further carried out attempts to hinder, delay, and make ineffectual prisoner and plaintiff access to the courts by informing prisoners, including plaintiffs Boyle and Gilmore, in hearings

before the California Adult Authority, that the Adult Authority took the activity of plaintiffs, in preparing in propria persona petitions and complaints, into account in a negative manner for the purpose of fixing length of sentence and and for the purpose of granting parole. Defendants follow a policy of using the powers of the Adult Authority to punish prisoners for filing complaints in Civil Rights or other actions, and for filing writs of habeas corpus.

Defendants have further carried out attempts to hinder, delay, and make ineffectual prisoner and plaintiff access to the courts by promulgating and attempting to enforce regulations which attempt to prohibit all legal assistance by one inmate to another, even if the inmate assisted is indigent and illiterate and does not have ability to prepare legal petitions, and even if the assistance is offered without any charge or condition. Defendants have confiscated papers, prepared and collected for use in this action, from plaintiff Van Geldern in pursuance of purported enforcement of said regulations, and defendants' attorneys refuse to deliver up such papers to plaintiffs' attorney.

Defendants follow a policy, and act and have acted accordingly, of punishing, under guise of punishing a violation of some other rule, inmates who prepare writs, petitions, or complaints to be submitted to the courts. Defendants have so acted towards and upon plaintiffs Boyle and Van Geldern.

Defendants limit the amount of time a prisoner or plaintiff can spend in the prison library to a number

of hours which is insufficient for the prisoners and plaintiffs, who are indigent and unlearned in the law, to properly prepare legal petitions and complaints.

Defendants do not allow prisoners to receive all of the lawbooks which the State library has, and only certain sets are available for circulation to inmates, and even of the sets theoretically available the practical availability is kept at such a low level that prisoners are unable to use them when they need them.

The individual defendants have committed separate acts, under color of acting pursuant to State statute, ordinance, regulation, custom, or usage, or have engaged in concerted action all designed to hinder, delay, and make ineffectual prisoner and plaintiffs' exercise of the right to complain to the authorities of the United States concerning violations of the laws of the United States, which right is guaranteed by the Constitution of the United States, especially Article Four, Section Two, and Article Six, and by the Fourteenth Amendment to the Constitution of the United States, Section One, or the individual defendants have had knowledge that such acts complained of, or concerted action complained of, were about to be committed, but these individual defendants, having power to prevent such acts or concerted action, neglected or refused to so prevent. Defendants have confiscated, or have refused to mail on, communications that prisoners and plaintiff Robertson have put into defendants' custody addressed to the Federal Bureau of Investigation, and to officials of the branches of government of the United States.

All of the acts, omissions, and concerted action complained of took place within a year immediately preceding the filing of No. 45878.

The acts, omissions, and concerted action complained of in the original complaints, and in amendments to the complaints, in Nos. 45878, 46297, 46298, and 46299, which are not complained of herein in the above matter are hereby complained of by incorporation by reference thereto. To the extent that matters complained of in this amended complaint are more particularly complained of in the original complaints, or in amendments to the original complaints, said greater particularity is hereby incorporated by reference thereto.

Plaintiffs do not know the names of defendants listed as Doe One through Doe Eighty. Plaintiffs will exercise due diligence in finding out the names of those defendants, and plaintiffs ask leave to amend to put in the real names of those defendants when said names are ascertained.

*Demand*

1. Plaintiffs demand a jury trial, should defendants contest the demands made herein for judgment, on contested issues of fact as provided for in Rule 38, Federal Rules of Civil Procedure. Plaintiffs request that a three-judge District Court be convened to hear and determine, on the basis of facts found by the jury, plaintiffs' demand for preliminary and permanent injunction.

2. Plaintiffs demand that defendants be permanently enjoined from enforcing the changes in prison regulations promulgated with Department of Corrections, State of California, Transmittal Letter 26/66 of September 19, 1966.

3. Plaintiffs demand that defendants be permanently enjoined from enforcing any regulations which would limit the access of prisoners to any lawbooks, any legal opinions, any legal publications, any documents prepared for use in court actions, or paper appropriate for use in filing petitions, such as pleading paper, unless the regulations enforced are for purposes which do not include the prevention of prisoner acquisition of legal knowledge and expertise for use in attacking convictions and sentences in the courts, or unless the regulations enforced are for purposes which do not include the prohibition of, or discouragement of, prisoners providing legal assistance to indigent prisoners when the assistance is provided free of charge or condition.

4. Plaintiffs demand that the injunctive relief requested in plaintiffs' motion for preliminary injunction be made a permanent injunction. Plaintiffs' motion for preliminary injunction was filed on March 14, 1967, with the Clerk of this court.

5. Plaintiffs demand that defendants be enjoined from acting towards plaintiffs, or the members of the class plaintiffs represent, in any way which is intentionally and purposefully and discriminatorily designed to discourage or deter plaintiffs from exercising their rights of access to the courts, and from

exercising their rights to complain to the authorities of the United States government concerning violations of the laws of the United States.

6. Plaintiff John Van Geldern demands judgment against defendants for ten thousand dollars ($10,000.-00), as general damages.

7. Plaintiff Thomas Francis Boyle, Jr. demands judgment against defendants for one hundred fifty thousand dollars ($150,000.00), as general damages.

8. Plaintiff Irving G. Robertson demands judgment against defendants for ten thousand dollars ($10,000.00), as general damages.

9. Plaintiff Albert G. Beattie demands judgment against defendants for one hundred twenty thousand dollars ($120,000.00), as general damages.

10. Plaintiff Robert O. Gilmore, Jr. demands judgment against defendants for fifty thousand dollars ($50,000.00), as general damages.

11. Each of the named plaintiffs demands judgment against defendants for ten thousand dollars ($10,000.00), as punitive damages, making a total demand of fifty thousand dollars ($50,000.00) in punitive damages.

12. Plaintiffs demand that defendants' conduct, as complained of herein, be declared contrary to the Constitution and laws of the United States, and that said conduct be further declared to be in violation of prisoner and plaintiffs' rights of access to the courts and rights to complain to the authorities of the United States concerning violation of the laws of the United States.

13. Plaintiffs demand that defendants be temporarily restrained from conduct which threatens immediate and substantial and irreparable injury and damage to plaintiffs, as set forth in the accompanying request for temporary restraining order and affidavit in support of said request, which are hereby incorporated by reference thereto.

/s/ John Eshleman Wahl,
Attorney for Plaintiffs,
1255 Post Street, Suite 1128,
San Francisco, California 94109

REQUEST FOR TEMPORARY RESTRAINING ORDER

Plaintiffs move the court, upon the complaints herein and the affidavit of John Eshleman Wahl, attached hereto, for a temporary restraining order against the defendants in this cause, their agents, servants, attorneys, and privies, pending the hearing and decision on plaintiffs' motion for a preliminary injunction, enjoining them from

I

Prohibiting inmates who are plaintiffs in this action from discussing this action with other inmates, or prohibiting plaintiffs in this action from possessing affidavits prepared by other inmates to be used in this action, or prohibiting plaintiffs in this action from possessing exhibits to affidavits to be used in this action when the affidavits or exhibits are intended for transmission to plaintiffs' attorney, or prohibiting plaintiffs from transmitting all such affidavits and exhibits to plaintiffs' attorney; and from

II

Punishing inmates for attempting to supply plaintiffs in this action with affidavits or exhibits to be sent to plaintiffs' attorney for use in this action; and from

III

Not delivering to plaintiffs' attorney, upon his demand at Folsom Prison during visiting hours, all the lawbooks and legal materials, affidavits, and exhibits of affidavits which were seized and confiscated from



the hospital locker of plaintiff John Van Geldern at Folsom Prison on or about March 26, 1967.

Plaintiffs further move for said temporary restraining order to be issued without formal notice and forthwith, on the ground that immediate substantial and irreparable injury and damage will result to plaintiffs before notice can be served and a hearing had thereon, as more fully appears from the attached affidavit of John Eshleman Wahl.

Dated:.....

.....

Attorney for Plaintiffs

AFFIDAVIT IN SUPPORT OF REQUEST FOR TEMPORARY RESTRAINING ORDER

State of California,
City and County of San Francisco—ss.

John Eshleman Wahl, being first duly sworn, deposes and says:

That he is attorney for plaintiffs in this cause, and that facts stated herein are true of his own knowledge except as to facts stated on information and belief, and that as to those matters he believes them to be true.

That on March 27, 1967, he received information that plaintiff Van Geldern's lawbooks had been confiscated. To investigate this report affiant, on March 28, 1967, went to Folsom Prison and there visited plaintiffs Van Geldern and Boyle. Plaintiff Van Geldern informed affiant that all of Van Geldern's legal materials which he had in his locker were confiscated, and that he was to be brought before a prison disciplinary board on charges of possessing contraband legal materials, which were affidavits and exhibits prepared and given to Van Geldern by other inmates for transmission to affiant for use in this action. Plaintiff Boyle informed affiant that he had been put in solitary confinement for giving plaintiff Van Geldern materials to be forwarded to affiant for use in this action, and plaintiff Boyle was to be brought before a prison disciplinary board on charges of assisting another inmate (Van Geldern) with legal work. Affiant does not know the outcome of the hearings, or if they have been had yet.

That affiant requested, by telephone, defendants' attorney, Mr. Robert R. Granucci, to obtain authorization for affiant to go to Folsom Prison and receive

the materials which Folsom authorities confiscated from plaintiff Van Geldern and which Van Geldern was getting ready to transmit to affiant. Defendants' attorney Granucci informed affiant that he would only allow affiant to have materials which plaintiff Van Geldern prepared himself, and that affiant would have to visit each inmate who prepared any material which plaintiff Van Geldern had and obtain that inmate's permission before affiant would be given the papers prepared by that inmate, even though those inmates had given the materials to plaintiff Van Geldern for transmission to affiant for use in this action. Furthermore affiant was given to understand that some exhibits to the affidavits would not be given to affiant in any event.

That plaintiffs, and the class they represent, suffer irreparable injury and damage as a result of defendants' acts already described and the threat of continued acts of this nature, because such conduct has damaged and continues to damage the effective preparation of plaintiffs' case by keeping information and documents, which are damaging to the defendants, from reaching counsel and court, and by keeping plaintiffs, and the class they represent, from freely communicating with each other and with counsel concerning this action, in which plaintiffs, and the class they represent, all have a common, real interest.

/s/ John Eshleman Wahl

Subscribed and sworn to before me this 3rd day of April, 1967.

(Seal) Phyllys M. Jackson,

Notary Public—California. Principal place of business in City and County of San Francisco. My commission expires January 28, 1971.

United States District Court for the
Northern District of California

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Civil Nos. 45878, 46297, 46298, 46299, 47015,
45749, 46495, 47111

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John Van Geldern, et al., Plaintiffs,

vs.

Thomas C. Lynch, et al., Defendants.

## AMENDED ORDER DENYING PLAINTIFFS' MOTION FOR THE CONVENING OF A THREE-JUDGE DISTRICT COURT

It Is Ordered that Plaintiffs' Motion for the Convening of a Three-Judge Court pursuant to 28 U.S.C. § 2281 and § 2284 is hereby DENIED. This order involves a controlling question of law as to which there is substantial ground for difference of opinion, and an immediate appeal from the order may materially advance the ultimate termination of the litigation. The controlling question of law which is involved is whether Plaintiffs' claims, that Defendants' prison regulations should be enjoined as depriving Plaintiffs of Constitutional rights of access to the courts and equal protection of the laws, involve one or more substantial questions of Constitutional law under the

standards established in *California Water Service Co. v. City of Redding*, 304 U.S. 252 (1938) and *Ex parte Poresky*, 290 U.S. 30 (1933).

Dated: July 6, 1967.

Albert C. Wollenberg
United States District Judge

Original filed Jul. 6, 1967. Clerk, U.S. Dist. Court, San Francisco.

United States Court of Appeals
for the Ninth Circuit

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Nos. 22,052 A-B-C-D-E-F

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Robert O. Gilmore, Jr., et al.,
Appellants,

vs.

Thomas C. Lynch, et al.,
Appellees.

[August 16, 1968]

On Appeal from the United States District Court
for the Northern District of California

Before: CHAMBERS, MERRILL and ELY, Circuit Judges

MERRILL, Circuit Judge:

This appeal is taken from an interlocutory order of the District Court for the Northern District of California denying petitioners' motion for the convening of a three-judge court pursuant to 28 U.S.C. §2281.[1]

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[1] "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

The appeal is taken pursuant to 28 U.S.C. §1292(b), the district judge having, in his order, certified that in his opinion the order involved "a controlling question of law as to which there is substantial ground for difference of opinion," and that "an immediate appeal from the order may materially advance the ultimate termination of the litigation." The controlling question as certified was whether appellants' claims involved a substantial question of constitutional law under the standards established in *California Water Service Co. v. City of Redding*, 304 U.S. 252 (1938), and *Ex Parte Poresky*, 290 U.S. 30 (1933).[2]

Appellants are 89 inmates of the California State Prison at San Quentin. The complaint names as defendants the People of the State of California, various prison officials and the head of the State Department of Correction. Appellants seek an injunction against the enforcement of certain rules adopted by the State Director of Corrections and contained in Department of Corrections Transmittal Letter No. 26/66, dated September 19, 1966, relating to the contents of prison law libraries and the future prison policy as to the obtaining and keeping by prisoners of private law

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[2]In *Poresky* the Court stated:

"The question may be plainly unsubstantial, either because it is 'obviously without merit' or because 'its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.'" 290 U.S. at page 32.

books and court opinions.[3] Appellants contend that these regulations violate the due process and equal protection clauses of the Fourteenth Amendment in that they seriously infringe their rights of access to the courts and discriminate between indigent and affluent prisoners (in that the latter can obtain outside counsel for legal research, thus gaining effective access to the courts).

In our judgment the constitutional questions thus posed cannot be said to be plainly unsubstantial under the *Poresky* standards. Courts are currently struggling with the question of the extent of a prisoner's rights to have access to legal materials, e.g., our opinion in *Hatfield v. Bailleaux*, 290 F.2d 632 (9th

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[3]These regulations are as follows:

"330.941. There shall be established in each institution a standard set of basic codes and references which shall consist of and be limited to:

1. The California Penal Code
2. The California Welfare and Institutions Code
3. The California Health and Safety Code
4. The California Vehicle Code
5. The United States and California Constitutions
6. A recognized law dictionary (such as Black's)
7. Witkin's California Criminal Procedures (Bender Moss Co.)
8. Subscription to California Weekly Digest
9. California Rules of Court
10. Rules of the United States Court of Appeals (Ninth Circuit)
11. Rules of the United States Supreme Court

330.042 Sufficient copies will be maintained to provide reasonable access on not less than a weekly basis.

330.043 All State owned law books and references will be maintained in a suitable place and no State owned books or references are to be removed from the designated 'law library,' except to administrative segregation units as scheduled.

330.044 Inmates will not be permitted to purchase or receive personally owned law books or reference material.

330.045 Inmates may receive or purchase a single copy of an opinion or decision in their own case (commonly known as 'slip opinions') and retain it in their own possession. • • •"

Cir.), *cert. denied,* 368 U.S. 862 (1961). The Supreme Court has not yet spoken on the subject and the law can hardly be said to be settled.

We conclude that the District Court was in error in its ruling that no substantial question of constitutional law was presented.

Appellees urge affirmance upon two additional grounds.

First, they contend that the regulations in question were not those of an "administrative board or commission" under §2281, but rather were promulgated by one man—the State Director of Correction.

We find no merit in this distinction. While the statute making provisions for three-judge courts is to be regarded as "an enactment, technical in the strict sense of the term and to be applied as such," *Phillips v. United States,* 312 U.S. 246, 251 (1941), still, as the Court in that case recognized, "The crux of the business is procedural protection against improvident statewide doom by a federal court of a state's legislative policy." 312 U.S. at page 251.

The regulation here is statewide in its application and is as effective and authoritative in its establishment of state policy as if it had been announced by a board of more than one member. See *McCormick & Co. v. Brown,* 52 F.2d 934, 937 (4th Cir. 1931), *aff'd* (without noting the particular point), 286 U.S. 131 (1932).[4]

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[4]In *Herkness v. Irion,* 278 U.S. 92 (1928), the Court considered a regulation promulgated by a single person without commenting on that fact.

Second, appellees contend that appellant's motion for a three-judge court was properly denied since the complaint not only attacks the regulation promulgated by the State Director of Corrections but also, and primarily, is directed at certain prison practices allegedly followed at San Quentin which are not statewide in application and not properly the subject of three-judge court jurisdiction.

This, however, is no justification for refusal to convene a three-judge court as to the tendered issues which are properly within its jurisdiction. Remaining issues can be withheld for single-judge determination. See Wright, *Federal Courts,* 165 (1963).

Reversed and remanded with instructions that the order be set aside and for further proceedings looking toward the convening of a three-judge court.

Original Filed Feb. 9, 1970
Clerk, U.S. Dist. Court, San Francisco

United States District Court
Northern District of California

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Civil Nos. 45878, 46297, 46298, 46299, 47015, 45749, 47111

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Robert O. Gilmore, Jr., John Van Geldern, et al., Plaintiffs,

vs.

Thomas C. Lynch, Attorney General of California, et al., Defendants.

## STIPULATION OF SETTLED STATEMENT OF ISSUES

Plaintiffs and defendants, by and through their respective counsel, hereby stipulate and agree that all motions heretofore filed, by counsel for any party to this action, shall be considered as filed as part of this settled statement of issues, and that the three-judge Court, heretofore convened in this matter, may decide all such motions heretofore filed in this matter on the basis of this settled statement of issues.

Plaintiffs and defendants further stipulate and agree, that the Court may enter judgment, and grant

relief, as expressly agreed upon the Court's deciding each issue stated herein.

*Issue Number:*

1. Are the present State-wide rules and regulations of the California Department of Corrections, governing access of State prisoners, confined in California penal institutions, to law books and other materials utilized in preparation of legal petitions, arguments, and pleadings, an unconstitutional infringement on prisoner access to the courts in so far as these rules and regulations affect indigent State prisoners?

2. Are the present State-wide rules and regulations of the California Department of Corrections, governing access of State prisoners, confined in California penal institutions, to law books and other materials utilized in preparation of legal petitions, arguments, and pleadings, an unconstitutional deprivation of equal protection of the laws in so far as these rules and regulations affect indigent State prisoners?

3. Are the present State-wide rules and regulations, governing legal assistance, given by one State prisoner to another in California penal institutions, a violation of the rule of *Johnson v. Avery*, 393 U.S. 483 (1969)?

4. Are the present State-wide rules and regulations governing access by prisoners in California penal institutions to books in the State law library, an unconstitutional deprivation of access to the courts

in so far as these rules and regulations affect indigent State prisoners?

5. Are the present State-wide rules and regulations governing access by prisoners in California penal institutions to books in the State law library, an unconstitutional deprivation of the rights of indigent prisoners to equal protection of the laws?

Plaintiffs and defendants, by and through their respective counsel, further stipulate and agree that all other issues in this matter, may be decided by a single judge, or a single judge and a jury, should any party request jury trial.

Plaintiffs and defendants, by and through their respective counsel, further stipulate and agree that the Court may confine its perusal of the record, if it please the Court, in deciding the above issues, to the sections of the record or other proof designated in briefs filed by each side and by amicus, in support of their respective positions on the issues set forth above. It is further stipulated that each side shall have to and including February 2, 1970 to file such a brief, and that matter in reply to each brief may be presented in oral argument.

Plaintiffs and defendants, by and through their respective counsel, further stipulate and agree that the following relief may be granted by the Court, if it please the Court, if the Court decides the issues above stated, in the manner indicated.

*Relief To Be Granted Upon Decision Of Issue, and Issue Number:*

1. If the Court decides the question embodying Issue No. 1 in the affirmative, then the provisions of Department of Corrections' Transmittal Letter 26/66, having to do with access of State prisoners, confined in California penal institutions, to law books and other materials utilized in preparation of legal petitions, arguments and pleadings, shall be declared to be an unconstitutional infringement on prisoner access to the courts, in so far as the said Transmittal Letter affects indigent state prisoners, and the defendants, and each of them, shall be enjoined and restrained from enforcing such provisions of the said Transmittal Letter; the defendants, and each of them, shall be further enjoined and restrained from prohibiting inmates of California penal institutions from possessing law books or legal opinions, or other materials utilized in preparation of legal petitions, arguments, and pleadings, except in so far as the defendants, or any of them, may regulate inmate possession of books in general because of space limitations or fire hazard; and shall be further enjoined and restrained from establishing exclusive, standardized lists of law books for all prison law libraries, and from destroying or removing from prison law libraries any existing law books, except as such books become useless because of excessive wear or mutilation.

If the Court decides the question embodying Issue No. 1 in the negative, then the Court shall declare that the Department of Corrections' Transmittal

Letter 26/66 is not an unconstitutional infringement on prisoner access to the courts in so far as the said Transmittal Letter affects indigent State prisoners.

2. If the Court decides the question embodying Issue No. 2 in the affirmative, then the provisions of Department of Corrections' Transmittal Letter 26/66, having to do with access of State prisoners, confined in California penal institutions, to law books and other materials utilized in preparation of legal petitions, arguments and pleadings, shall be declared to be an unconstitutional deprivation of equal protection of the laws, in so far as the said Transmittal Letter affects indigent state prisoners, and the defendants, and each of them, shall be enjoined and restrained from enforcing such provisions of the said Transmittal Letter; the defendants, and each of them, shall be further enjoined and restrained from prohibiting inmates of California penal institutions from possessing law books or legal opinions, or other materials utilized in preparation of legal petitions, arguments, and pleadings, except in so far as the defendants, or any of them, may regulate inmate possession of books in general because of space limitations or fire hazard; and shall be further enjoined and restrained from establishing exclusive, standardized lists of law books for all prison law libraries, and from destroying or removing from prison law libraries any existing law books, except as such books become useless because of excessive wear or mutilation.

If the Court decides the question embodying Issue No. 2 in the negative, then the Court shall declare

that the Department of Corrections' Transmittal Letter 26/66 is not an unconstitutional deprivation of equal protection of the laws in so far as the said Transmittal Letter affects indigent State prisoners.

3. If the Court decides the question embodying Issue No. 3 in the affirmative, then the defendants, and each of them, shall be restrained and enjoined from prohibiting any inmate from possessing the legal materials of another inmate, when those legal materials are freely given by the inmate owning them, and when they are possessed for the purpose of rendering legal assistance, without charge or condition of any kind, to the inmate owning the said legal materials.

If the Court answers the question embodying Issue No. 3 in the negative, then the present State-wide rules and regulations governing legal assistance, given by one State prisoner to another in California penal institutions, shall be declared not to be any violation of the rule of *Johnson v. Avery*, 393 U.S. 483 (1969).

4. If the Court answers the question embodying Issue No. 4 in the affirmative, then the defendants, and each of them, shall be restrained and enjoined from not allowing prisoners to receive all of the law books which the State library has, except for rare books or collector's items, and the defendants, and each of them, shall be further enjoined and restrained from prohibiting inmates from possessing more than one law book from the State library at a time, and the defendants shall be further restrained and en-

joined from treating requests by prisoners for law books from the State library with lower priority than other requests for law books received by the State library.

If the Court answers the question embodying Issue No. 4 in the negative, then the present State-wide rules and regulations governing access by prisoners in California penal institutions to books in the State law library shall be declared not to be an unconstitutional deprivation of access to the courts in so far as these rules and regulations affect indigent State prisoners.

5. If the Court answers the question embodying Issue No. 5 in the affirmative, then the defendants, and each of them, shall be restrained and enjoined from not allowing prisoners to receive all of the law books which the State library has, except for rare books or collector's items, and the defendants, and each of them, shall be further enjoined and restrained from prohibiting inmates from possessing more than one law book from the State library at a time, and the defendants shall be further restrained and enjoined from treating requests by prisoners for law books from the State library with lower priority than other requests for law books received by the State library.

If the Court answers the question embodying Issue No. 5 in the negative, then the present State-wide rules and regulations governing access by prisoners in California penal institutions to books in the State law library shall be declared not to be an unconsti-

tutional deprivation of the rights of indigent prisoners to equal protection of the laws.

It is further stipulated that the attached Appendices contain the prison and library rules and regulations constituting the subject matter of the issues presented for consideration by the three-judge court. Appendix A consists of the precise rules and regulations, the validity of which is in issue in their present form; Appendix B consists of Transmittal Letter No. 26/66, all material modifying its terms, and all material modifying other prison rules and regulations challenged in the Amended Complaint filed in the instant action.

Dated, January ....., 1970.

Thomas C. Lynch
Attorney General of California

Robert R. Granucci
Deputy Attorney General

George R. Nock
Deputy Attorney General
Attorneys for Defendants

John Eshleman Wahl
Attorney for Plaintiffs

## Appendix A

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**DEPARTMENT OF CORRECTIONS**
**ADMINISTRATIVE MANUAL (Paragraphs)**

330.041

There shall be established in each institution a standard set of basic codes and references which shall consist of and be limited to:

1. The California Penal Code
2. The California Welfare and Institutions Code
3. The California Health and Safety Code
4. The California Vehicle Code
5. The United States and California Constitutions
6. A recognized law dictionary (such as Black's)
7. Witkin's California Criminal Procedures (Bender Moss Co.)
8. Subscription to California Weekly Digest
9. California Rules of Court
10. Rules of United States Court of Appeals (Ninth Circuit)
11. Rules of United States Supreme Court

330.042

Sufficient copies will be maintained to provide reasonable access on not less than a weekly basis.

330.043

All State owned law books and references will be maintained in a suitable place and no State owned books or references are to be removed from the des-

ignated "law library", except to administrative segregation units as scheduled.

330.051

In accordance with the Rules of the Director of Corrections, inmates may have legal material challenging their conviction or commitment typed by an established inmate typing pool under supervision of appropriate staff. Appropriate consideration will be given to time limits for filings. Multiple copies of petitions will be prepared for the State Supreme Court and for other courts as required. Photostatic copies of legible handwritten material will be acceptable unless otherwise directed by a court on an individual basis.

330.052

Forms required by the State or Federal courts will be provided without charge. Inmates will be required to pay for postage, paper and envelopes for all legal documents.

330.054

The responsibility for mailing legal documents will rest with the individual inmate. A legal mail box will be provided for this purpose. Mail will be picked up on each work day for delivery to the institution mail room for inspection and mailing not later than the following work day.

330.056

Inmates in the isolation unit will be allowed pencil and paper for the purpose of preparing a Writ of Habeas Corpus or corresponding with an attorney.

330.06 *State Library—*

Services of the State Law Library will be continued.

State of California
Department of Corrections
Sacramento 95814
January 12, 1967

Transmittal Letter No. 1/67

To: Wardens and Superintendents; Deputy Director, Correctional Conservation Camp Services Division; Chief, Parole and Community Services Division; and Staff Members

Subject: Department of Corrections Administrative Manual Change

Section 330, Legal Papers, Paragraph 330.07, is added to permit assistance by personnel to inmates who are illiterate or otherwise physically incapable of preparing their own petitions for Habeas Corpus or Modification of Custody.

Pursuant to discussion during the recent Wardens and Superintendents Conference, each institution is encouraged to explore the possibilities of obtaining free legal assistance to inmates through law schools or other sources in their area. Plans for such assistance are to be submitted to the Director for review before any firm commitments are made.

Walter Dunbar
Director of Corrections

Attachment

**DEPARTMENT OF CORRECTIONS**
**ADMINISTRATIVE MANUAL (Paragraph)**

330.07 *Assistance to Inmates—*
In accordance with Director's Rule D5218, Petitions and Writs, employees shall not assist in the preparation of a petition for executive clemency or in the preparation of writs unless specifically directed to do so by the institutional or division head. In order that inmates who are illiterate or otherwise physically incapable of preparing documents themselves for recourse to the courts, each institution will make provision for assistance in the preparation of forms adopted under rules of the United States courts and by the Judicial Council of California for petitions for Habeas Corpus or Modification of Custody.

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**DIRECTOR'S RULES**

D2601. *LAW BOOKS.* The use of institution law books by inmates is a privilege which may be withdrawn upon misuse. State-owned law books are not to be removed from the designated place of study. Personally-owned law books shall be limited by local regulations to the availability of space for personal property in the inmate's quarters. Law books in excess of this limitation may be donated to the library, sent home or destroyed, whichever the inmate prefers.

D2602. *INMATE ASSISTANCE.* One inmate may assist another inmate in the preparation of legal documents, but may not receive remuneration therefor. Remuneration is not limited to present benefits, but

includes future as well as past benefits. A room or rooms may be designated by the Warden or Superintendent for this purpose. All briefs, petitions and other legal papers must be and remain in the possession of the inmate to whom they pertain.

D2604. *MATERIAL.* Forms required by the state or federal courts will be provided without charge. You will be required to pay for postage, paper, envelopes, and all other materials except the forms previously mentioned.

State of California
Department of Corrections
Sacramento 95814

May 9, 1969

Transmittal Letter No. 5/69

To: Wardens and Superintendents, Deputy Directors, and Staff Members

Subject: Department of Corrections' Administrative Manual Revision

Section 330, Legal Papers, Paragraph 330.044, regarding the purchase of personally owned law books, and Paragraph 330.045, regarding "slip opinions" and legal documents containing cumulative case summary information, are eliminated.

Please see that all personnel concerned are informed of the above.

R. K. Procunier
Director of Corrections

State of California

MEMORANDUM

Date: September 25, 1969

To: Superintendent, California Conservation Center
Superintendent, California Correctional Institution
Superintendent, California Institution for Men
Superintendent, California Institution for Women
Superintendent, California Medical Facility
Superintendent, California Men's Colony
Superintendent, California Rehabilitation Center
Superintendent, Correctional Training Facility
Superintendent, Duel Vocational Institution
Superintendent, North Coast Conservation Center
Superintendent, Sierra Conservation Center
Superintendent, Southern Conservation Center
Warden, Folsom State Prison
Warden, San Quentin State Prison

Subject: Inmate Legal Assistance

From: Department of Corrections, Sacramento 95814

Pursuant to Director's Rule D2601, one inmate may assist another inmate in the preparation of legal documents.

In order that inmates in Adjustment Centers and Segregation Units might receive assistance, upon request of one inmate another inmate from within the unit of assignment may be permitted to confer with and assist in the preparation of legal documents or discussion of legal problems.

The time for such assistance may be limited to a reasonable period such as one hour per day, three days per week.

The selection of such assistance may be controlled to avoid undesirable associations or known custodial hazards.

Please ascertain that personnel in charge of the above units are advised of this procedure.

R. K. Procunier
Director of Corrections

California State Library
Law Library
Library and Courts Bldg.
Sacramento, California 95809

**INFORMATION FOR PRISON LIBRARIANS**

The following sets *only* are available for circulation to prison inmates:

| *Title* | *Abbreviation* |
|---|---|
| California Appellate Reports | CA |
| California Appellate Reports, 2d Series | CA 2d |
| California Reports | C |
| California Reports, 2d Series | C 2d |
| California Reporter | C Rptr |
| Pacific Reporter | P |
| Pacific Reporter, 2d Series | P 2d |
| Federal Reporter | F |
| Federal Reporter, 2d Series | F 2d |
| Federal Rules Decisions | FRD |
| Federal Supplement | F Supp |
| United States Reports | US |
| Supreme Court Reporter | SCt |
| U.S. Supreme Court Reports, Lawyers Edition | L Ed |
| Lawyers Edition, 2d Series | L Ed 2d |
| California Codes (State Pamphlet editions only) | |

California Statutes and Amendments
to the Codes Cal Stats

Note: SCt. Us, and L Ed contain the same cases. C & CA cases are found in P until 1960. After 1960 C cases are found in C Rptr and P, CA in C Rptr.

We return cards for several reasons:

Out in circulation—Either out circulating or a duplicate request: we do not reserve books for inmates.

Not in State Library—Incomplete set for prison circulation. (See attached page for listing of missing volumes)

Return for more complete information—Incorrect citation or insufficient information.

Not for circulation—Does not circulate to inmates: requests for staff should be marked "Staff" with name.

Your cooperation and assistance will help us give the best possible service with limited staff and time.

Please: Do not request anything not listed above, except for "Staff".

*Do not send in more than 5 requests per man each week, or more than one request for a particular volume: we only have one copy.*

Mark volume number and abbreviation of title in the upper left-hand box marked "Call number", with one card for each volume.

Sort cards by report title and volume number, from low to high.

Send in all your requests together once a week.

Thank you

Volumes lacking from prison library collection
July 1967

| *Title* | *Volumes Missing* |
|---|---|
| CA | 29, 103 |
| CA 2d | 45, 112 |
| C | 29, 49, 61, 74, 83, 101, 152 |
| C 2d | 5, 6, 28, 44, 52, 55, 58, 62 |
| C Rptr | 5, 8, 14, 26 |
| P | 58, 202, 209, 210 |
| P 2d | 284, 371, 382, 400 |
| F 2d | 43, 152, 156, 310, 343 |
| FRD | 3, 33, 34, 35 |
| F Supp | 53, 246 |
| US | 1-4, 17-18, 23-24, 66, 68, 83, 114, 168, 188, 190-192, 194-195 197-201, 203-204, 228-259, 262-263, 265-283, 287, 308-309, 323, 328 338, 346, 354, 356-357, 359-360, 371, 378, 380 |
| SCt | 1-7, 14-36, 39-41, 47, 52, 65, 73, 78, 79, 81, 81A, 82, 82A, 84, 84A |
| L Ed | 27-82, 84, 86, 96 |
| L Ed 2d | 2, 6, 10 |

## Appendix B

Human Relations Agency

**State of California**

**MEMORANDUM**

Date: December 23, 1969

To: The Honorable Thomas C. Lynch
Attorney General
Department of Justice

Attention: Mr. George R. Nock, Jr.
Deputy Attorney General

From: Department of Corrections,
Sacramento 95814

Pursuant to your request, we are forwarding the following documents:

Exhibit 1: Transmittal Letter No. 26/66 containing changes in Administrative Manual Sections 155, 330, 330.0311, removing Sections 330.032 and 330.033, and adding Sections 330.04, 330.042 through 330.044, 330.045, 330.05, 330.051 through 330.058 and 330.06.

Exhibit 2: Director's Rule D2605 in effect September 19, 1966, and referred to in Transmittal Letter 26/66 (included on pages 28 and 29 of Director's Rules issued 1960).

Exhibit 3: Director's letter of November 10, 1966, modifying the last sentence of the sixth paragraph of Transmittal Letter 26/66.

Exhibit 4: Transmittal Letter 1/67 containing instructions regarding assistance to illiterate or incapable inmates and transmitting additions to Administrative Manual Section 330 regarding processing inmate petitions and writs.

Exhibit 5: Chapter II, Article 6, of Director's Rules issued 1967, Policy Regarding Legal Documents, including Rules D2605 and D5217 which is former Rule D2605.

Exhibit 6: Transmittal Letter DR/4 containing a revision of Chapter II, Article 6, of the Director's Rules and eliminating Rule D5217.

Exhibit 7: Transmittal Letter 5/69 containing revisions eliminating paragraphs 330.044, regarding the purchase of law books, and 330.045, regarding the purchase of "slip opinions".

Exhibit 8: Director's letter of September 25, 1969, regarding inmates assisting each other in the preparation of legal documents.

I certify under penalty of perjury that the attached exhibits are true and correct copies of the originals on file in the office of the Director of Corrections.

/s/ A. G. Oakley
Assistant to the Director

AGO:sb
Attachments (8)

Exhibit 1

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State of California
Department of Corrections
Sacramento 14

September 19, 1966

Transmittal Letter No. 26/66

To: Wardens and Superintendents; Deputy Director, Correctional Conservation Camp Services Division; Chief, Parole and Community Services Division; and Staff Members

Subject: Department of Corrections Administrative Manual Change

Section 155, Civil Rights, Paragraph 155.01 through 155.019 are revised to correct the names and references.

Section 155, Civil Rights, Paragraph 155.02 is added to clarify the need for restoration of civil rights for Federal actions.

Section 330, Legal Papers, is revised as follows:

Paragraph 330.0311 is revised.

Paragraphs 330.032 and 330.033 are removed.

Paragraph 330.04, Law Books and References, is added to specify a uniform list of law books and references to be made available in each institution. These books are to be obtained from existing funds and all existing law books and references in inmate law

libraries not consistent with this section are to be removed and destroyed.

Paragraphs 330.042 through 330.044 are added to provide policy for the library. Paragraph 330.045 is added to preclude personally owned law books and to generally exclude personally owned copies of opinions and decisions.

Paragraph 330.05, Processing Inmate Petitions and Writs, is added.

Paragraphs 330.051 through 330.058 are added to set forth policy for processing inmate legal documents and the payment of postage. Director's Rule D2605 has been revised to provide for these procedures and to eliminate review by the institution head or his representative prior to mailing.

Paragraph 330.06 is added to provide for the continued use of the State Law Library.

Please see that all personnel concerned are informed of the above.

Walter Dunbar
Director of Corrections

Attachments

Section 155

REV.
Par.

155.01 *Restoration of civil rights to adult inmates*—

Civil rights lost by prison inmates under Sections 2600 and 2601 of the Penal Code may, with a few exceptions, be restored by action of the Adult Authority or the Women's Board of Terms and Parole under those same sections. These exceptions, in brief, cover a general power of attorney, the right to act as a trustee or hold public office or exercise the privileges of an elector. The latter three rights may be restored only through pardon action by the Governor.

While certain specified acts, including the sale or conveyance of property, may not require restoration of civil rights, the products of a prisoner's efforts and activities belong to him only with the permission or at the sufferance of the prison authorities. It is the policy of the Department that prisoners while confined not be permitted to convey instructions or material which contribute to the operation of a private business.

REV.
155.011

In accordance with a policy agreed upon by the Director of Corrections and the Boards, all applications for restoration of civil rights not covered by Resolutions will be screened by the appropriate Board and the Warden or institution head

in question will be informed as to whether or not the request falls within the policy of that Board. If restoration is necessary, the Board will advise the institution head of the action which it has taken on each matter.

Par.

155.0111 *Sample request form, inmate's request—*

Below is a sample of form to be used when inmate makes a request for restoration of civil rights. This form will be followed as closely as the circumstances of the case permits. Information to be inserted shall be typewritten.

Warden.....:

Will you please obtain for me whatever authority is necessary to sign the following documents:

(Check of John Doe (Attorney) on ..... State Bank, Texas for $..... being proceeds of my father's estate.)

My purpose for this request is as follows:

(To send the check to my mother, Fannie S. Smith, ..... St. and No., ..... City, ..... State, to cash and use the proceeds.)

The money or property involved in this contemplated act has no connection with my present offense which is:

(List applicable offense, citing Code Section.)

Signature (Inmate's name)
Prison No. (Inmate's number)
Date .....

(Send to my mother
400 E. Calif. Blvd.
Ontario, California)

Par.

155.012

No request for restoration of civil rights is necessary on matters covered under Section 2603 of the Penal Code since the law itself makes an exception in certain instances. For example, a Deed of Trust or a Quit Claim Deed is a conveyance of property and inmates may file such documents without the formality of having their civil rights restored.

155.013

The United States Constitution guarantees the right of an inmate to file a Writ of Habeas Corpus, which right is not dependent on the restoration of any civil rights. Such right, however, is limited to applications for habeas corpus and/or other legal proceedings attacking the legality of an inmate's imprisonment. See Administrative Manual Paragraph 330.031.

REV.

155.0131

Applications for permission to bring civil suits or similar legal actions in a state court must be made to the appropriate Board. When an application is submitted to the Warden or Superintendent and he is in doubt as to whether or not restoration of civil rights is required, it should be referred to the appropriate Board for determination.

REV.

155.014

All requests made by institution inmates for restoration of civil rights under Sections 2600 and 2601 of the Penal Code not covered by Resolutions, therefore will be transmitted by the Wardens and Superintendents to the Board direct.

REV.
155.015

Actions taken by the Board thereon will be transmitted direct to the Wardens and Superintendents.

REV.
155.016

Such requests shall be directed to the chairman of the appropriate Board and shall include the following:

155.0161

The inmate's signed request for restoration of civil rights.

Par.
155.0162

All documents and correspondence relating to the exercise of civil rights in question.

REV.
155.0163

A letter of transmittal from the Warden or Superintendent or his designated representative giving pertinent information as to the date of commitment, offense committed, sentence, county of commitment, subsequent actions by the Boards relating to the fixing of terms and granting of parole and a statement as to whether the present request is related in any way to the offense on which the inmate was committed.

REV.
155.017

Certain documents and correspondence (if essential to an understanding of such documents) relating to the exercise of the civil right in question, shall be forwarded to the Board's adminis-

trative office in duplicate if they are prepared at the institution or if an extra copy can be secured when they are prepared on the outside. This requirement applies to (1) petitions for writs, (2) contracts and leases, (3) agreements, (4) special powers of attorney (not including standard forms issued by government agencies), (5) petitions in bankruptcy, and (6) any document of an unusual nature not covered by Resolutions. The extra copies are required for the Board's file in support of the action taken.

REV.
155.018

In order to expedite the handling of recurring inmate's requests for restoration of civil rights of a noncontroversial nature, the Boards have adopted Resolutions giving blanket permission to inmates and parolees to exercise certain civil rights as listed in the Resolution. Reference should be made constantly to this Resolution by the staff involved in the handling of requests for restoration of civil rights.

REV.
155.019

It is pointed out that under Section 2602 of the Penal Code a prisoner sentenced to death is deemed civilly dead during the existence of the death sentence and the Boards cannot restore civil rights to such persons.

Par.
ADD
155.02

The filing of a civil action in a Federal court does not require the restoration of civil rights.

## LEGAL PAPERS

### Section 330

Par.

330.02 *Serving of legal papers in institutions—*

No charge will be made for the serving of legal papers on the inmates confined in institutions under the jurisdiction of the Director of Corrections. If a fee accompanies the request for service, said fee will be returned to the sender. This in no way precludes the proper serving of papers on inmates in the institution by the proper officials appearing in person at the institution. However, if a request for service is mailed in then, the institution officials will serve the same.

330.03 *Preparation of legal documents by inmates—*

See Article 6, Chapter II, Legal Documents, in the Rules and Regulations of the Director of Corrections.

330.031

Inmates shall be allowed to mail out writs or petitions for writs concerning the legality of their imprisonment directly to the court indicated in the writ or petition for a writ without regard to the form or content of the document.

REV.

330.0311

Section 2015.5 of the Code of Civil Procedures as added by the 1957 Statutes provides as follows: "Whenever, under any law of this State or under any rule, regulation, order or requirement made pursuant to law, any matter is required or permitted to be evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath or affidavit, in writing of the person

making the same, (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may with like force and effect be evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person stating the date and place of execution, and which is subscribed by him and certified or declared by him to be true 'under penalty of perjury', which certification or declaration may be in substantially the following form:

I certify (or declare) under penalty of perjury that the foregoing is true and correct."

Documents filed in accordance with Federal laws or with the laws of other states will still require certification before a notary public. Section 118 of the California Penal Code provides a penalty for making a false statement under the provisions described above.

ADD

330.04 *Law books and references—*

ADD

330.041

There shall be established in each institution a standard set of basic codes and references which shall consist of and be limited to:

1. The California Penal Code
2. The California Welfare and Institutions Code
3. The California Health and Safety Code
4. The California Vehicle Code
5. The United States and California Constitutions

6. A recognized law dictionary (such as Black's)
7. Witkin's California Criminal Procedures (Bender Moss Co.)
8. Subscription to California Weekly Digest
9. California Rules of Court
10. Rules of United States Court of Appeals (Ninth Circuit)
11. Rules of United States Supreme Court

ADD

330.042

Sufficient copies will be maintained to provide reasonable access on not less than a weekly basis.

ADD

330.043

All State owned law books and references will be maintained in a suitable place and no State owned books or references are to be removed from the designated "law library", except to administrative segregation units as scheduled.

ADD

330.044

Inmates will not be permitted to purchase or receive personally owned law books or reference material.

ADD

330.045

Inmates may receive or purchase a single copy of an opinion or decision in their own case (commonly known as "slip opinions") and retain it in their own possession. Legal documents such as a return on an order to show cause which contain cumulative case summary information

will be placed in the inmate's property and made available for reference under supervision.

ADD

330.05 *Processing inmate petitions and writs—*

ADD

330.051

In accordance with the Rules of the Director of Corrections, inmates may have legal material challenging their conviction or commitment typed by an established inmate typing pool under supervision of appropriate staff. Appropriate consideration will be given to time limits for filings. Multiple copies of petitions will be prepared for the State Supreme Court and for other courts as required. Photostatic copies of legible handwritten material will be acceptable unless otherwise directed by a court on an individual basis.

ADD

330.052

Forms required by the State or Federal courts will be provided without charge. Inmates will be required to pay for postage, paper and envelopes for all legal documents.

ADD

330.053

A current list of addresses of the various courts will be provided in an available location. Notary services will be provided for Federal or out-of-state documents.

ADD

330.054

The responsibility for mailing legal documents will rest with the individual inmate. A legal mail

box will be provided for this purpose. Mail will be picked up on each work day for delivery to the institution mail room for inspection and mailing not later than the following work day.

ADD

330.055

Each piece of legal mail addressed to a court which requires the addition of postage will be accompanied by a signed form CDC 193, Trust Account Withdrawal Order. The mail room will remove the Withdrawal Order, enter the amount of postage and forward the form to the Trust Office at designated intervals. The Trust Office will post the amount of postage to the inmate's Trust Account card as a deduction to the extent that funds are available. The mail room officers will examine the content of the envelope for contraband or contraband mail, seal the envelope and send it out. The Mail Card will reflect the mailing date of all legal material. There will be no review of the contents of legal mail by personnel except in occasional specific instances for custodial reasons.

ADD

330.056

Inmates in the isolation unit will be allowed pencil and paper for the purpose of preparing a Writ of Habeas Corpus or corresponding with an attorney.

ADD

330.06 *State Library—*

Services of the State Law Library will be continued.

Exhibit 2

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**DIRECTOR'S RULES**

Chapter II, Article 5 (cont'd)

4. Any material which appears to glorify crime or delinquent conduct or which deals with the technique of committing crimes.

5. Any material which might be offensive to any race, nationality, religious faith, political party or other group of citizens.

6. Reference to the fact that the writter is an inmate of a State Prison or is a parolee therefrom.

D2503. Manuscripts of Inmates Under Sentence of Death. Prisoners under sentence of death shall not be permitted to submit any manuscript of any kind for sale or for publication.

D2504. Use of Materials in Preparing Manuscripts. No materials purchased with State funds shall be used in the preparation of manuscripts.

Article 6. Legal Documents

D2601. Law Books. There shall be a suitable place in each institution where inmates, with the permission of the designated employee, may have access to study such law books as are available to them. No law books shall be taken from such place by any inmate. The use of law books by inmates in an institution is a privilege, not a right. Misuse of the privilege may result in its withdrawal.

D2602. Inmate Assistance. No inmate shall assist or receive assistance from another in the preparation of legal documents. Any brief or petition not pertaining to his own case found in the possession of an inmate shall be confiscated. If an inmate does not have his own typewriter, he may arrange, through proper channels, to have his legal documents typed.

D2603. False Statements or Perjury in Legal Documents. Any inmate who submits a [28] document containing a false statement and which is notarized or certified as true and correct under penalty of perjury, is subject to disciplinary action.

D2604. Material. All paper and other material used for legal documents shall be purchased by the inmate. Exception must first be approved by the institutional head.

D2605. Disposal of Legal Documents. All legal papers, incoming and outgoing, shall be sent to the institutional head or his designated representative, and shall not be mailed or otherwise released without his written authorization.

## Article 7. Visiting

### Policy Regarding Visits

Visits by family members, desirable friends, business associates and former or prospective employers, contribute to the morale and treatment of inmates. The Department of Corrections encourages such wholesome visits and provides the means, compatible with security, for such visits.

D2701. Visits A Privilege. Receiving visits is a privilege, not a right, and is subject to restriction or forfeiture.

D2702. Visits to Inmates. The institutional head, with the approval of the Director, shall establish visiting regulations, not inconsistent or in conflict with the following:

1. A suitable place within the institution shall be provided for inmate visits. Except by permission of institutional head, no inmate shall be visited elsewhere.
2. Any inmate who does not wish to see a visitor shall be requested to refuse such visit in writing and in any case a notation shall be made in the record of such refusal. [29]

## Exhibit 3

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State of California
Department of Corrections
State Office Building No. 1
Sacramento 14

November 10, 1966

Supt. Iverne R. Carter, Frontera
Supt. H. M. Comstock, Sierra Conservation Center
Supt. H. Field, Los Padres
Supt. C. J. Fitzharris, Soledad
Deputy Supt. W. G. Black, Soledad
Supt. W. D. Achuff, So. Conservation Center
Supt. G. P. Lloyd, Tehachapi
Supt. E. J. Oberhauser, Chino
Warden A. L. Oliver, Folsom
Supt. R. K. Procunier, Tracy
Supt. M. Schneckloth, Conservation Center
Warden Lawrence E. Wilson, San Quentin
Supt. Roland Wood, Calif. Rehab. Center
Acting Supt. L. J. Pope, Vacaville
Subject: Law Libraries

Please refer to Transmittal Letter No. 26/66 issued September 19, 1966.

Pending further instructions from this office, the existing law books and references in inmate libraries which were to be replaced by the listing set forth in Administrative Manual Section 330.04 are not to be destroyed.

/s/ Walter Dunbar,
Director of Corrections

Exhibit 4

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State of California
Department of Corrections
Sacramento 95814

January 12, 1967

Transmittal Letter No. 1/67

To: Wardens and Superintendents; Deputy Director, Correctional Conservation Camp Services Division; Chief, Parole and Community Services Division; and Staff Members

Subject: Department of Corrections Administrative Manual Change

Section 330, Legal Papers, Paragraph 330.07, is added to permit assistance by personnel to inmates who are illiterate or otherwise physically incapable of preparing their own petitions for Habeas Corpus or Modification of Custody.

Pursuant to discussion during the recent Wardens and Superintendents Conference, each institution is encouraged to explore the possibilities of obtaining free legal assistance to inmates through law schools or other sources in their area. Plans for such assistance are to be submitted to the Director for review before any firm commitments are made.

Walter Dunbar,
Director of Corrections

Attachment

**DEPARTMENT OF CORRECTIONS**
**ADMINISTRATIVE MANUAL**

**SEPT. 19, 1966 TL 26/66**

**LEGAL PAPERS**

Section 330

ADD

330.05 *Processing inmate petitions and writs—*

ADD

330.051

In accordance with the Rules of the Director of Corrections, inmates may have legal material challenging their conviction or commitment typed by an established inmate typing pool under supervision of appropriate staff. Appropriate consideration will be given to time limits for filings. Multiple copies of petitions will be prepared for the State Supreme Court and for other courts as required. Photostatic copies of legible handwritten material will be acceptable unless otherwise directed by a court on an individual basis.

ADD

330.052

Forms required by the State or Federal courts will be provided without charge. Inmates will be required to pay for postage, paper and envelopes for all legal documents.

ADD

330.053

A current list of addresses of the various courts will be provided in an available location. Notary services will be provided for Federal or out-of-state documents.

ADD

330.054

The responsibility for mailing legal documents will rest with the individual inmate. A legal mail box will be provided for this purpose. Mail will be picked up on each work day for delivery to the institution mail room for inspection and mailing not later than the following work day.

ADD

330.055

Each piece of legal mail addressed to a court which requires the addition of postage will be accompanied by a signed form CDC 193, Trust Account Withdrawal Order. The mail room will remove the Withdrawal Order, enter the amount of postage and forward the form to the Trust Office at designated intervals. The Trust Office will post the amount of postage to the inmate's Trust Account Card as a deduction to the extent that funds are available. The mail room officers will examine the content of the envelope for contraband or contraband mail, seal the envelope and send it out. The Mail Card will reflect the mailing date of all legal material. There will be no review of the contents of legal mail by personnel except in occasional specific instances for custodial reasons.

330.056

Inmates in the isolation unit will be allowed pencil and paper for the purpose of preparing a Writ of Habeas Corpus or corresponding with an attorney.

330.06 *State Library—*

Services of the State Law Library will be continued.

ADD

330.07 *Assistance to Inmates—*

In accordance with Director's Rule D5218, Petitions and Writs, employees shall not assist in the preparation of a petition for executive clemency or in the preparation of writs unless specifically directed to do so by the institutional or division head. In order that inmates who are illiterate or otherwise physically incapable of preparing documents themselves for recourse to the courts, each institution will make provision for assistance in the preparation of forms adopted under rules of the United States courts and by the Judicial Council of California for petitions for Habeas Corpus or Modification of Custody.

Exhibit 5

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**DIRECTOR'S RULES**

Chapter II, Article 6

ARTICLE 6. LEGAL DOCUMENTS

Policy Regarding Legal Documents

It is the policy of the Department to allow inmates every legal access to the courts. The Department, however, is neither equipped nor authorized to assist inmates in their legal efforts. There will be a suitable place in each institution where inmates, with the permission of the designated employee, may have access to study such institution law books as are available to them. Law books are defined to include constitutions, codes, court reports, texts, dictionaries.

D2601. *Law Books.* The use of institution law books by inmates is a privilege which may be withdrawn upon misuse. Do not take law books from the designated place of study. Personally owned law books are not permitted.

D2602. *Inmate Assistance.* Do not assist or receive assistance from another in the preparation of legal documents. Any brief or petition not pertaining to your own case found in your possession will be confiscated. You may have legal material challenging your conviction or commitment typed by an established inmate typing pool under supervision of appropriate staff in those institutions providing such services. Appropriate consideration will be given to time limits for filings.

D2603. *False Statements or Perjury in Legal Documents.* Do not make false statements in any document.

D2604. *Material.* Forms required by the state or federal courts will be provided without charge. You will be required to pay for postage, paper, envelopes, and all other materials except the forms previously mentioned.

D2605. *Procedures.* The mailing of legal documents to courts will be your individual responsibility. A legal mail box will be provided for this purpose and the mail will be picked up each working day for delivery to the institution mail room for inspection and mailing. A current list of addresses of the various courts will be provided and notary services will be provided for federal or out-of-state documents. For each legal piece of mail requiring the addition of postage, you will be required to sign a form CDC 193. Trust Account Withdrawal Order. The mail room will remove this Withdrawal Order, enter the amount of postage and forward it to the Trust Office for posting against available funds. The mail room officer will examine the content of the envelope for contraband or contraband mail, seal the envelope, and send it out daily. This will be posted on the mail card.

D2606. *Legal Matters While in Isolation Unit.* Inmates assigned to the isolation unit will be permitted pencil and paper for the purpose of preparing a legal document or for corresponding with an attorney.

D5216. *Contacting or Corresponding With a Prisoner's Family.* No employee shall contact or correspond with any member of a prisoner's family, nor with any person on an inmate's approved visiting or correspondence list, unless his assigned duties require it, or he has the permission of his division or institutional head. If an employee is deliberately contacted while off duty by a member of a prisoner's family, visitor or correspondent, he shall immediately report the fact to his division or institutional head.

D5217. *Disposal of Legal Documents.* All legal papers incoming and outgoing, shall be sent to the institutional head or his designated representative and shall not be mailed or otherwise released without his written authorization.

D5213. *Petitions and Writs.* Employees shall not assist in the preparation of a petition for executive clemency or in the preparation of writs unless specifically directed to do so by the institution or division head.

D5219. *Commitment of Relatives or Close Friends.* If an employee becomes aware that any relative or close friend has been committed to or transferred to the jurisdiction of the Director of Corrections, the employee shall report it to his division or institutional head immediately.

D5220. *Shop Work for Employees.* Except as provided elsewhere in these rules, no work shall be done in any shop or department of an institution for an employee or other private person.

D5221. *Use of Supplies.* No employee shall consume or use food or supplies purchased or produced for inmate or departmental use, except as he may legally be entitled to do so, or is directed to do so by the institutional head. The Department of Corrections' postage or stamping facilities shall not be used except in the conduct of official business even though the Department is reimbursed.

D5222. *Use of Vehicles.* State vehicles shall be used for official use only, and only such employees as are authorized by the division and/or institutional head shall drive such vehicles. Drivers shall have in their possession a valid operator's license issued by the California Department of Motor Vehicles. When cars are equipped with safety belts, these shall be worn at all times while driving.

At no time shall an inmate be permitted to drive a vehicle on a public road, except in extreme emergency. In each such case a written report giving all details shall be submitted to his supervisor immeditely following the emergency by the affected employee. Any employee who permits an inmate to drive a vehicle on a public road, except in real emergency, may be subject to disciplinary action.

Ignition on all vehicles shall be locked and the keys removed when the vehicle is not in use.

## Exhibit 6

State of California
Department of Corrections
Sacramento 95814
March 19, 1969

Revision Letter No. DR/4

To: Wardens and Superintendents, Deputy Directors; and Staff Members

Subject: Department of Corrections' Director's Rule Book Revision

Director's Rule D2406, Use of Personally Owned Typewriters, has been revised to eliminate the statement regarding not assisting another inmate in preparing manuscripts, legal papers, or other written material.

Chapter II, Article 6, Legal Documents, Policy Regarding Legal Documents, is revised to provide for staff assistance to inmates who are illiterate or otherwise physically incapable of preparation of prescribed forms for writs.

Director's Rule D2602, Inmate Assistance, is revised to permit an inmate to assist another inmate in the preparation of legal documents.

Director's Rule D5210, Trading or Bartering, has been revised to include lending with trading or bartering.

Director's Rule D5217, Disposal of Legal Documents, is abolished.

Please see that all personnel concerned are informed of the above.

R. K. Procunier
Director of Corrections

**DIRECTOR'S RULES**

Chapter II, Article 4

D2405. *Participation in Prize Contests.* You will not be permitted to enter or participate in contests sponsored by radio and television.

REV.

D2406. *Use of Personally Owned Typewriters.* Do not lend typewriters or do another's typing in the preparation of manuscripts, legal papers, or other written material, except as authorized by proper employees. State-owned typewriters shall not be used for the preparation of any personal written material, except as authorized in Rule D2602.

## Article 5. Inmate Manuscripts

*Submission of Manuscripts*

It is the policy of the Department to permit manuscripts, within reasonable limits, to be submitted for publication. Such writings are considered primarily educational activities, having as their purpose the development of skills or talent. Articles must be in good taste and must not be related to the inmate's business or profession. Inmates shall not enter contractual agreements with publishers involving a commitment for a regular published column. Inmates should be encouraged to enroll in courses in creative writing.

D2501. *Manuscripts Defined.* Manuscripts include written musical compositions, articles of fiction, nonfiction, poems, essays, gags, plays, skits, or drawings of any kind.

D2502. *Approval of Manuscripts.* Manuscripts will be submitted in accordance with institutional regulations for review by the designated employee. The Warden or Superintendent shall establish standards for acceptance of meritorious material among which will be the disapproval of that which contains:

1. Plagiarized material.
2. Obvious libelous, lewd, pornographic or inaccurate material.
3. Material criticizing any governmental, judicial, or law enforcement agency or institution, or any personnel connected therewith.
4. Material which appears to glorify crime or delinquent conduct, or which deals with the technique of committing crimes.
5. Material which might be offensive to any race, nationality, religious faith, political party, or other group of citizens.
6. Material in which the inmate attempts to capitalize on his status as an inmate in order to sell his article.

D2503. *Manuscripts of Inmates Under Sentence of Death.* Prisoners under sentence of death shall not be permitted to prepare or submit any manuscript of any kind for sale or for publication.

DR/4
March 19, 1969

D2504. *Use of Materials in Preparing Manuscripts.* Use no state material in the preparation of manuscripts.

D2505. *Percentage to IWF and Retention.* To defray handling costs a percentage established by the Director will be deducted from the payment received for each manuscript and deposited in the Inmate Welfare Fund. A percentage established by the Director will be deducted for deposit in the inmate's retention fund. These percentages will be the same as those established for paintings. Prior to the submission of a manuscript for publication, the inmate will sign an agreement authorizing such deductions.

## Article 6. Legal Documents

*Policy Regarding Legal Documents*
REV.

It is the policy of the Department to allow inmates every legal access to the courts. The Department, however, is neither equipped nor authorized to assist inmates in their legal efforts except to provide staff assistance to inmates, who are illiterate or otherwise physically incapable, in the preparation of forms adopted under rules of the United States Courts and by the Judicial Council of California for petitions for Habeas Corpus or Modification of Custody. There will be a suitable place in each institution where inmates, with the permission of the designated employee, may have access to study such institution law books as are available to them. Law books are defined to include constitutions, codes, court reports, texts, and dictionaries.

D2601. *Law Books.* The use of institution law books by inmates is a privilege which may be with-

drawn upon misuse. State-owned law books are not to be removed from the designated place of study. Personally-owned law books shall be limited by local regulations to the availability of space for personal property in the inmate's quarters. Law books in excess of this limitation may be donated to the library, sent home or destroyed, whichever the inmate prefers.

REV.

D2602. *Inmate Assistance.* One inmate may assist another inmate in the preparation of legal documents, but may not receive remuneration therefor. Remuneration is not limited to present benefits, but includes future as well as past benefits. A room or rooms may be designated by the Warden or Superintendent for this purpose. All briefs, petitions and other legal papers must be and remain in the possession of the inmate to whom they pertain.

D2603. *False Statements or Perjury in Legal Documents.* Do not make false statements in any document.

D2604. *Material.* Forms required by the state or federal courts will be provided without charge. You will be required to pay for postage, paper, envelopes, and all other materials except the forms previously mentioned.

D5216. *Contacting or Corresponding With a Prisoner's Family.* No employee shall contact or correspond with any member of a prisoner's family, nor with any person on an inmate's approved visiting or

correspondence list, unless his assigned duties require it, or he has the permission of his division or institutional head. If an employee is deliberately contacted while off duty by a member of a prisoner's family, visitor or correspondent, he shall immediately report the fact to his division or institutional head.

D5218. *Petitions and Writs.* Employees shall not assist in the preparation of a petition for executive clemency or in the preparation of writs unless specifically directed to do so by the institution or division head.

D5219. *Commitment of Relatives or Close Friends.* If an employee becomes aware that any relative or close friend has been committed to or transferred to the jurisdiction of the Director of Corrections, the employee shall report it to his division or institutional head immediately.

D5220. *Shop Work for Employees.* Except as provided elsewhere in these rules, no work shall be done in any shop or department of an institution for an employee or other private person.

D5221. *Use of Supplies.* No employee shall consume or use food or supplies purchased or produced for inmate or departmental use, except as he may legally be entitled to do so, or is directed to do so by the institutional head. The Department of Corrections' postage or stamping facilities shall not be used except in the conduct of official business even though the Department is reimbursed.

D5222. *Use of Vehicles.* State vehicles shall be used for official use only, and only such employees

as are authorized by the division and/or institutional head shall drive such vehicles. Drivers shall have in their possession a valid operator's license issued by the California Department of Motor Vehicles. When cars are equipped with safety belts, these shall be worn at all times while driving.

At no time shall an inmate be permitted to drive a vehicle on a public road, except in extreme emergency. In each such case a written report giving all details shall be submitted to his supervisor immediately following the emergency by the affected employee. Any employee who permits an inmate to drive a vehicle on a public road, except in real emergency, may be subject to disciplinary action.

Ignition on all vehicles shall be locked and the keys removed when the vehicle is not in use.

DR/4
March 19, 1969

Exhibit 7

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State of California
Department of Corrections
Sacramento 95814

May 9, 1969

Transmittal Letter No. 5/69

To: Wardens and Superintendents, Deputy Directors, and Staff Members

Subject: Department of Corrections' Administrative Manual Revision

Section 330, Legal Papers, Paragraph 330.044, regarding the purchase of personally owned law books, and Paragraph 330.045, regarding "slip opinions" and legal documents containing cumulative case summary information, are eliminated.

Please see that all personnel concerned are informed of the above.

R. K. Procunier
Director of Corrections

**DEPARTMENT OF CORRECTIONS**
**ADMINISTRATIVE MANUAL**

**T.L. 5/69 MAY 9, 1969**

**LEGAL PAPERS**

Section 330

Par.

330.02 *Serving of legal papers in institutions*—

No charge will be made for the serving of legal papers on the inmates confined in institutions under the jurisdiction of the Director of Corrections. If a fee accompanies the request for service, said fee will be returned to the sender. This in no way precludes the proper serving of papers on inmates in the institution by the proper officials appearing in person at the institution. However, if a request for service is mailed in then, the institution officials will serve the same.

330.03 *Preparation of legal documents by inmates*—

See Article 6, Chapter II, Legal Documents, in the Rules and Regulations of the Director of Corrections.

330.031

Inmates shall be allowed to mail out writs or petitions for writs concerning the legality of their imprisonment directly to the court indicated in the writ or petition for a writ without regard to the form or content of the document.

330.0311

Section 2015.5 of the Code of Civil Procedure as added by the 1957 Statutes provides as follows:

"Whenever, under any law of this State or under any rule, regulation, order or requirement made pursuant to law, any matter is required or per-

mitted to be evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath or affidavit, in writing of the person making the same, (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may with like force and effect be evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person stating the date and place of execution, and which is subscribed by him and certified or declared by him to be true 'under penalty of perjury', which certification or declaration may be in substantially the following form:

I certify (or declare) under penalty of perjury that the foregoing is true and correct."

Documents filed in accordance with Federal laws or with the laws of other states will still require certification before a notary public. Section 118 of the California Penal Code provides a penalty for making a false statement under the provisions described above.

330.04 *Law books and references—*

330.041

There shall be established in each institution a standard set of basic codes and references which shall consist of and be limited to:

1. The California Penal Code
2. The California Welfare and Institutions Code
3. The California Health and Safety Code
4. The California Vehicle Code
5. The United States and California Constitutions
6. A recognized law dictionary (such as Black's)

7. Witken's California Criminal Procedures (Bender Moss Co.)
8. Subscription to California Weekly Digest
9. California Rules of Court
10. Rules of United States Court of Appeals (Ninth Circuit)
11. Rules of the United States Supreme Court

330.042

Sufficient copies will be maintained to provide reasonable access on not less than a weekly basis.

330.043

All State owned law books and references will be maintained in a suitable place and no State owned books or references are to be removed from the designated "law library", except to administrative segregation units as scheduled.

330.05 *Processing inmate petitions and writs—*

330.051

In accordance with the Rules of the Director of Corrections, inmates may have legal material challenging their conviction or commitment typed by an established inmate typing pool under supervision of appropriate staff. Appropriate consideration will be given to time limits for filings. Multiple copies of petitions will be prepared for the State Supreme Court and for other courts as required. Photostatic copies of legible handwritten material will be acceptable unless otherwise directed by a court on an individual basis.

330.052

Forms required by the State or Federal courts will be provided without charge. Inmates will be required to pay for postage, paper and envelopes for all legal documents.

330.053

A current list of addresses of the various courts will be provided in an available location. Notary services will be provided for Federal or out-of-state documents.

330.054

The responsibility for mailing legal documents will rest with the individual inmate. A legal mail box will be provided for this purpose. Mail will be picked up on each work day for delivery to the institution mail room for inspection and mailing not later than the following work day.

330.055

Each piece of legal mail addressed to a court which requires the addition of postage will be accompanied by a signed form CDC 193, Trust Account Withdrawal Order. The mail room will remove the Withdrawal Order, enter the amount of postage and forward the form to the Trust Office at designated intervals. The Trust Office will post the amount of postage to the inmate's Trust Account Card as a deduction to the extent that funds are available. The mail room officers will examine the content of the envelope for contraband or contraband mail, seal the envelope and send it out. The Mail Card will reflect the mailing date of all legal material. There will be no review of the contents of legal mail by personnel except in occasional specific instances for custodial reasons.

330.056

Inmates in the isolation unit will be allowed pencil and paper for the purpose of preparing a Writ of Habeas Corpus or corresponding with an attorney.

330.06 *State Library—*

Services of the State Law Library will be continued.

330.07 *Assistance to Inmates—*

In accordance with Director's Rule D5218, Petitions and Writs, employees shall not assist in the preparation of a petition for executive clemency or in the preparation of writs unless specifically directed to do so by the institutional or division head. In order that inmates who are illiterate or otherwise physically incapable of preparing documents themselves for recourse to the courts, each institution will make provision for assistance in the preparation of forms adopted under rules of the United States courts and by the Judicial Council of California for petitions for Habeas Corpus or Modification of Custody.

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**State of California**

**MEMORANDUM**

Date: September 25, 1969

To: Superintendent, California Conservation Center
Superintendent, California Correctional Institution
Superintendent, California Institution for Men
Superintendent, California Institution for Women
Superintendent, California Medical Facility
Superintendent, California Men's Colony
Superintendent, California Rehabilitation Center
Superintendent, Correctional Training Facility

Superintendent, Duel Vocational Institution
Superintendent, North Coast Conservation Center
Superintendent, Sierra Conservation Center
Superintendent, Southern Conservation Center
Warden, Folsom State Prison
Warden, San Quentin State Prison

Subject: Inmate Legal Assistance

From: Department of Corrections, Sacramento 95814

Pursuant to Director's Rule D2601, one inmate may assist another inmate in the preparation of legal documents.

In order that inmates in Adjustment Centers and Segregation Units might receive assistance, upon request of one inmate another inmate from within the unit of assignment may be permitted to confer with and assist in the preparation of legal documents or discussion of legal problems.

The time for such assistance may be limited to a reasonable period such as one hour per day, three days per week.

The selection of such assistance may be controlled to avoid undesirable associations or known custodial hazards.

Please ascertain that personnel in charge of the above units are advised of this procedure.

R. K. Procunier
Director of Corrections

In the United States District Court for the Northern District of California

Case No. 45878*

Robert O. Gilmore, Jr., John Van Geldern, et al., Plaintiffs,

vs.

Thomas C. Lynch, Attorney General of California, et al., Defendants.

## ORDER GRANTING RELIEF

Before: DUNIWAY, U. S. Circuit Judge, and ZIRPOLI and WOLLENBERG, U.S. District Judges.

Plaintiffs herein are prisoners at various facilities administered by the California Department of Corrections. They challenge certain rules and regulations of the Department concerning inmate access to law books, legal materials, and lay assistance in preparing prisoner writs and complaints. Also attacked are procedures of the California State Law Library regarding circulation of Legal materials to prisoners. Since plaintiffs ask that the enforcement of these

*This case has been consolidated with the following cases: 46297, 46298, 46299, 47015, 47111, 45749, 48232, 48351, 48352, 48353, 48354, 48355, 48361, 48362, 48607, 48858, 48974, 49073, 49090, 49856, 49942, 49943, 50024, 50775, and 50855.

rules be enjoined on constitutional grounds, and since the rules are of state-wide applicability, a three judge court was mandated by the Court of Appeals for this Circuit. *Gilmore v. Lynch,* 400 F.2d 228 (1968); cert. den. *Lynch v. Gilmore,* 393 U.S. 1092 (1968); 28 U.S.C. §2281; *Okla. Gas Co. v. Russell,* 261 U.S. 290 (1923); *Ala. Comm. v. Sthn. Ry. Co.,* 341 U.S. 341, 343 (footnote #3) (1951).

Some of the prison rules originally brought into question by plaintiffs have since been suppressed or amended in response to changed institutional situations and in light of recent court decisions.[1] Others remain, however, and their constitutionality is now before the Court. More specifically, the Court is asked to pass on Prison Regulation 330.041, which establishes an exclusive list of "basic codes and references" for prison use,[2] and Director's Rule 2602, which,

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[1]Most noteworthy among these decisions is *Johnson v. Avery,* 393 U.S. 483 (1969).

Prisoners who are financially capable of doing so may now purchase law books and other materials for their personal use. Transmittal Letter No. 5/69, dated May 9, 1969, and signed by R. K. Procuner, Director of Corrections. Similarly, more articulate and better educated inmates may assist others in the preparation of legal papers. Director's Rule D2602, as modified.

[2]The Department of Corrections Administrative Manual sets forth the text of Regulation 330.041 as follows:

"There shall be established in each institution a standard set of basic codes and references which shall consist of and be limited to:

(1) The California Penal Code
(2) The California Welfare and Institutions Code
(3) The California Health and Safety Code
(4) The California Vehicle Code
(5) The United States and California Constitutions
(6) A recognized law dictionary (such as Black's)
(7) Witkin's California Criminal Procedures (Bender Moss Co.)

among other provisions, requires that all legal papers remain in the possession of the inmate to whom they pertain.[3] The State Library procedures herein questioned also set up a restricted list of law books available for prison circulations. Evidently, only one copy of each of the listed works is set aside for inmate borrowers, and even a great many of these have been lost or stolen over the years.[4]

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(8) Subscription to California Weekly Digest
(9) California Rules of Court
(10) Rules of United States Court of Appeals (Ninth Circuit)
(11) Rules of United States Supreme Court

The above regulation is to be read in conjunction with the Director's Transmittal Letter 26/66, which, in discussing the regulation, adds that "all existing law books and references in inmate law libraries not consistent with this section are to be removed and destroyed." By informal stipulation of the parties, this directive of the Transmittal Letter has not been enforced during the pendency of this action.

[3]D2602 reads as follows: "One inmate may assist another inmate in the preparation of legal documents, but may not receive remuneration therefor. Remuneration is not limited to present benefits, but includes future as well as past benefits. A room or rooms may be designated by the Warden or Superintendent for this purpose. All briefs, petitions and other legal papers must be and remain in the possession of the inmate to whom they pertain."

[4]The sets available from the State Law Library for circulation to prison inmates are the California Appellate Reports (1st and 2d); California Reports (1st and 2d); California Reporter; Pacific Reporter (1st and 2d); Federal Reporter (1st and 2d); Federal Rules Decisions; Federal Supplement; United States Reports; Supreme Court Reporter; U.S. Supreme Court Reports, Lawyers' Edition (1st and 2d); California Codes (pamphlet editions only); and California Statutes and Amendments to the Codes.

The apparent completeness of the above list is illusory in view of the facts alluded to above, i.e., that there is only one copy of each of the above sets available for circulation to all California prisoners (of which there are some 30,000), and that a great many volumes have been lost or stolen and have not been replaced. Ninety-three volumes of the United States Reports, for

The arguments put forward by each side are simply summarized. Plaintiffs allege that the above rules and regulations, taken individually, are arbitrary and unreasonable, and that taken collectively they deny indigent prisoners, and their jailhouse lawyers, the legal expertise which is necessary if access to the courts by these persons is to be in any way meaningful. Defendants answer with a citation to certain dicta in *Hatfield v. Bailleaux,* 290 F.2d 632 (1961), a decision by a three-judge court of this Circuit. While affirming the right of the incarcerated not to be unreasonably hindered in making use of the courts, *Hatfield* added that "[s]tate authorities have no obligation . . . .to provide library facilities and an opportunity for their use to enable an inmate to search for legal loopholes in the judgment and sentence under which he is held, or to perform services which only a lawyer is trained to perform". *Id.* at 640.[5] Defendants conclude from this that the provision of law books in prison libraries is a matter of governmental grace,

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example, are quite unavailable to any inmate borrower. The borrower's ability to seek out parallel citations in other volumes is hindered, to say the least, by the lack of any lists of parallel citations in either the prisons or on the State Law Library Prison List.

[5] *Hatfield* passed upon the constitutional acceptability of certain Oregon prison regulations which were, for the most part, "time, place and manner" restrictions on access to legal materials, rather than restrictions on the *kinds* of legal materials available to indigents. The regulations in *Hatfield* barred access to law books for prisoners in temporary isolation, and limited the free time which prisoners could spend on legal research. The Court noted that periods of isolation in no case before it exceeded 27 days, and found the other rules reasonable in light of the prisons' interest in barring the practice of jailhouse law. The latter consideration is, of course, no longer cognizable under *Johnson v. Avery, supra* note 1.

i.e. a privilege to be withheld or conditioned as the State chooses. Alternatively, the Attorney General argues that the regulations here under attack are defensible in light of certain legitimate state interests. He cites the need for "economy and standardization" as justifying the restricted prison book lists. The rule barring retention by jailhouse lawyers of papers pertaining to the affairs of others is justified by the need to deny such "lawyers" the tools by which they might coerce payment for their services. Finally, the procedures of the State Library are said to be aimed at problems of loss and mutilation occasioned by inmate borrowers.

The dual thrust of defendants' argument is an implicit recognition that labelling prison libraries a "privilege" and not a "right" will not forestall judicial inquiry into the conditions upon which the "privilege" is granted or withheld. See the oft-cited article by Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 Harv. L.R. 1439 (1968). The prisoner is no longer regarded as a temporay "slave of the State" [*Ruffin v. Commonwealth*, 62 Va. 790 (1871)], and prison officials are not now such masters of their own domain as to be free of the restraints of constitutional reasonability. *Coffin v. Reichard*, 143 F.2d 443 (1944); *Jackson v. Godwin*, 400 F.2d 529 (1960). The Courts have used various linguistic formulae to describe the limits to prison rule-making authority, sometimes speaking of constitutional rights which are so pre-eminent that they cannot be alienated no matter what the needs of

penal administration might be, and at other times voiding regulations which confer or withhold "privileges" so arbitrarily as to constitute unequal protection of the laws to certain classes of prisoners. *Pierce v. LaVallee*, 293 F.2d 233 (1961); *Jackson v. Godwin, cit. supra.* In most cases, however, the basic test remains the same: the asserted interest of the State in enforcing its rule is balanced against the claimed right of the prisoner and the degree to which it has been infringed by the challenged rule. Most prison regulations reflect the clear exigencies of a penal situation and the courts are justifiably reluctant to question their wisdom. *Austin v. Harris*, 226 F.Supp. 304 (1964). Other rules, though, touch upon interests of which the judiciary is more solicitous, and the burden of justifying these regulations is especially heavy, comparable to the "overwhelming state interest" required by *Shapiro v. Thompson*, 394 U.S. 618 (1969).[8]

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[8]Thus, the right of a prisoner not to be subjected to racial discrimination is so paramount that it will prevail over even a strong showing that racial segregation of inmates tends to lessen intramural strife and disciplinary problems. Also most closely scrutinized will be charges of religious persecution. *Pierce v. LaVallee and Jackson v. Godwin, cit. supra.*

Statements of the general rule differ in their tone, but nonetheless make it clear that prison rules must pass the basic test of due process reasonability, with that test being more or less stringent according to the character of the right taken from the prisoner. Thus: "The general rule is that under ordinary circumstances prison authorities have a large discretion as to matters of prison administration and that a federal court will not grant relief to a state prisoner complaining against his warden because of the latter's discretionary orders. There are exceptional cases as when a substantive right is involved." *Nolan v. Scafati*, 38 U.S.L.W. 2340 (1969). Also: "[C]onviction and incarceration deprive [one] only of such liberties as the law has ordained he shall suffer for his transgressions. . . . A prisoner retains all the

The rights invoked by plaintiffs herein have been given considerable emphasis by past and present case law. Reasonable access to the courts is a constitutional imperative which has been held to prevail against a variety of state interests.[7] Similarly, the right under the equal protection clause of the indigent and uneducated prisoner to the tools necessary to receive adequate hearing in the courts has received special reenforcement by the federal courts in recent decades. *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Douglas v. California*, 372 U.S. 353 (1963); *Griffin v. Illinois*, 351 U.S. 12 (1956); *Richards v. Townsend*, 303 F. Supp. 793 (1969).

Plaintiffs argue, then, that at stake here are two principles of recognized importance, i.e. their rights to reasonable access to the courts, and to equal protection of the laws. But the simple invocation of these phrases will not carry the day for plaintiffs, for they must further show that these rights are not only affected by the regulations under attack, but are infringed to such a degree as to render the justifications offered by the State inadequate and unreason-

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rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law . . . the acts of which appellant complains . . . were not necessary for the proper punishment of an insubordinate inmate to secure his submission and obedience to its reasonable rules and regulations." *Coffin v. Reichard, cit. supra* at pp. 444-45.

[7]One of the earliest enunciations of the rule was in *Ex parte Hull*, 312 U.S. 546 (1941), which, though admitting the legitimacy of official desires to ensure that inmate petitions were "properly drawn", nonetheless voided a prison regulation which required all habeas petitions to be reviewed by prison authorities before being filed.

able as a matter of law. Here, the State alleges that the infringement is minimal, and that its interests are great, and this claim must now be weighed by the Court.

The basic codes and references authorized for prison use under Prison Regulation 300.041 would offer meager fare to a criminal lawyer. There are no annotated codes, no United States Reports, no federal reports, no California Reports. There are unannotated versions of four of California's codes, but there is no copy of any part of the United States Code. There are copies of the rules of the California and certain federal courts, but there is no edition of the Rules of the Federal District Courts which receive a great many of the habeas corpus petitions, and all of the civil rights petitions, filed by California prisoners. There is one copy of Witkin's treatise on California criminal procedure, but there are no other law books or journals, such as "U.S. Law Week", on the list.

The State answers that the needs of a criminal lawyer are not comparable to those of an inmate, since no legal expertise is required of a prisoner asking for judicial relief. All the convicted felon need do is file a brief statement of the facts of his case. If these facts state a colorable ground for relief, an attorney will be appointed to argue the case. There is no need, it is claimed, for legal arguments or citations in a collateral attack upon a judgment of conviction. See 28 U.S.C. §2242, and Sokol, *Federal Habeas Corpus*, pp. 92-94 (1969) (Second Edition).

The wording of the statute and the wishes of the scholars notwithstanding, this Court takes notice that more than simple "facts" are needed in order to file an adequate petition for relief by way of habeas corpus. A prisoner should know the rules concerning venue, jurisdiction, exhaustion of remedies, and proper parties respondent. He should know *which* facts are legally significant, and merit presentation to the Court, and which are irrelevant or confusing. When the Return is filed, it is never without abundant citations to legal authority, and a proper traverse must take cognizance of these points. No attorney filing a habeas petition omits a statement of points and authorities, and neither does the State's attorney in responding to one. *Johnson v. Avery, supra* note 1, has explicitly recognized the relevance of legal expertise to the filing of petitions in habeas corpus. "For all practical purposes, if [illiterate and poorly educated] prisoners cannot have the assistance of a 'jail-house lawyer', their possibly valid constitutional claims will never be heard in any court." *Id.* at 487, citing the lower court decision at 252 F.Supp. 783, 784 (1966). The initial burden of persuading a judge that an evidentiary hearing is necessary lies with the prisoner; given the hundreds of petitions with which the courts are flooded, this burden is a heavy one which only "a few old hands or exceptionally gifted prisoners" can carry. *Id.* at 488.

"Access to the courts", then, is a larger concept than that put forward by the State. It encompasses all the means a defendant or petitioner might require to

get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him. In some contexts this has been interpreted to require court-appointed counsel for indigents. *Gideon v. Wainwright* and *Douglas v. California, cit. supra.* In other situations, the State might be obligated to provide free transcripts, process-serving facilities, and *in forma pauperis* filing privileges. Indigents asking for habeas corpus relief are not invariably entitled to court-appointed counsel [*Eskridge v. Rhay,* 345 F.2d 778 (1965)], but *Johnson v. Avery, supra,* note 1, makes it clear that some provision must be made to ensure that prisoners have the assistance necessary to file petitions and complaints which will in fact be fully considered by the courts.

The alternatives open to the State are legion It might authorize Public Defenders to help inmates in collateral proceedings. Or it could institute programs whereby law students and professors could aid the indigent convict.[8] The solution thus-far chosen by California is patch-work: the affluent are guaranteed the right to communicate with private counsel [Calif. Pen. Cde. §2600(2)], and to buy personal law books without restriction to save as to space limitations.[9] The indigent, however, are relegated to seeking out fellow inmates with legal knowledge and to the resources of the prison law library, the contents of which are severely limited under the regulation now

[8]For further suggestions, see Larsen, Spector, and Krause, *Prison Writ-Writing: Three Essays,* 56 Calif. L. Rev. 342 (1968).

[9]See note 1, *supra.*

under attack. The prison libraries are to some extent backed up by the State Law Library. However, that institution has itself composed a restricted list, also under challenge here, which shares the weaknesses of the Department of Corrections list described above in that many works are not on the list, and even the books listed are apt to be missing.

Thus, while recent reforms have immeasurably aided the more affluent of California's prisoners in securing access to legal advice and the courts, the lot of the indigent inmate has been somewhat neglected. This neglect of one class, when contrasted with the attention paid to the rights of others, raises serious equal protection questions. Further, for the reasons above stated, plaintiffs' very clearly defined right to reasonable access to the courts is seriously infringed by the highly restricted nature of the book list set forth in Prison Regulation 300.041, even if that list is theoretically supplemented by the State Law Library.

The countervailing considerations offered by the State do not provide sufficient justification for the regulation. The Attorney General has cited the need for economy and standardization in the prisons, but such asserted interests were considered and found insufficient in nearly all the indigent rights cases cited above. In truth, the governmental interests advanced by the defendants in those cases seem much stronger than the considerations advanced by the Attorney General here. The admittedly substantial disciplinary problems of newly integrated prisons

were held to be no justification for continuing segregation in other prisons. The fact that a religion allegedly preached race hatred did not make right official attempts to bar adherents of that religion from holding chapel services in prison. *Jackson v. Godwin,* and *Pierce v. LaVallee, cit. supra; Lee v. Washington,* 390 U.S. 333 (1968); *Fulwood v. Clemmer,* 206 F. Supp. 370 (1962). Judge Blackmun, when offered similar justifications for the use of the strap in Arkansas prisons answered simply and effectively that "[w]e are not convinced . . . by any suggestion that the State needs this tool for disciplinary purposes and is too poor to provide other accepted means of prisoner regulation. Humane considerations and constitutional requirements are not, in this day, to be measured or limited by dollar considerations or by the thickness of the prisoner's clothing." *Jackson v. Bishop,* 404 F.2d 571, 580 (1968).[10] Just as the harshness of Arkansas prison whips was not deemed mitigated by the provision that all prisoners be clothed when punished, neither is the fundamental inade-

[10] *Johnson v. Avery, supra* note 1 at p. 488, offers another example of a judicial balancing of "indisputable" State interests against clear inmate rights, and a finding that the latter must prevail:

"It is indisputable that prison "writ-writers" like petitioner are sometimes a menace to prison discipline and that their petitions are often so unskillful as to be a burden on the courts which receive them. But, as this Court held in *Ex parte Hull* [*supra* note 7], in declaring invalid a state prison regulation which required that prisoners' legal pleadings be screened by state officials:

"'The considerations that prompted [the regulations'] formulation are not without merit, but the state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus.'"

quacy of the restricted book list here relieved by the fact that California authorities have succeeded in "standardizing" the law libraries in all of that State's institutions.

The relief to be fashioned by the Court in the instant case presents some problem. On the one hand, a court of equity is traditionally given great discretion in such matters; on the other, judges have always feared to rush in where correctional officials are presumed more fit to tread. Balancing both these considerations, the Court will enjoin the enforcement of Prison Regulation 330.041, but it will not itself undertake the task of devising another system whereby indigent prisoners are given adequate means of obtaining the legal expertise necessary to obtain judicial consideration of alleged grievances cognizable by the courts. The Department of Corrections will, therefore, decide whether to expand the present list of basic codes and references in the manner suggested by this opinion, or whether to adopt some new method of satisfying the legal needs of its charges.

The court is also asked to enjoin the enforcement restrictions by the State Law Library on prisoner use of its collections. This we will decline to do. Assuming that the Department provides adequately for inmate legal needs, the back-stopping function now performed by the State Library will become superfluous, and the Library's need to cope with the real problems posed by serving a prison population would constitute sufficient justification for the rules which are here attacked.

There remains for this Court's consideration only Director's Rule 2602, which provides that "[O]ne inmate may assist another inmate in the preparation of legal documents, but . . . all briefs, petitions and other legal papers must be and remain in the possession of the inmate to whom they pertain." Plaintiffs allege that this rule prevents meaningful mutual assistance, in that it requires in effect that all writing take place in mess halls, where such is impossible, or in libraries, where access is limited and talking is banned. The Court notes, however, that the rule can be easily interpreted to bar only storage of completed legal papers in the cells of persons to whom they do not pertain. Thus, the "jailhouse lawyer" could compose such documents in his own cell, but once they are completed he must deliver them to the possession of the "client", without any threats to retain them until payment is forthcoming. Assuming such an interpretation of Director's Rule 2602, the Court finds it constitutionally valid.

Accordingly It Is Hereby Ordered that Defendants be and are enjoined from enforcing Prison Regulation 330.041. Defendants are further Ordered, on or before September 1, to file with this Court new or amended regulations which accord with the principles expressed herein. If plaintiffs desire oral argument on the adequacy of such new or amended regulations, they will properly move for a hearing thereon. Otherwise, the Court will entertain written briefs concerning the proposed regulations, and will make such further decision as it deems appropriate. In the

interim, no law books, codes, or references now in prison libraries will be destroyed or removed because they are not on the basic reference list promulgated by Prison Regulation 300.041.

It Is So Ordered.
Dated: May 26, 1970.

Ben C. Duniway
United States Circuit Judge

Alfonso J. Zirpoli
United States District Judge

Albert C. Wollenberg
United States District Judge

Original filed May 28, 1970
Clerk, U.S. Dist. Court
San Francisco

United States District Court
Northern District of California

No. 45878

Robert O. Gilmore, Jr.,
John Van Geldern, et al., Plaintiffs,

vs.

Thomas C. Lynch, Attorney General
of California, et al., Defendants.

ORDER

Good cause appearing therefor, It Is Hereby Ordered that upon the timely filing by defendants of a Jurisdictional Statement in the Supreme Court, the order of this Court, dated May 26, 1970, be stayed, insofar as it orders defendants, on or before September 1, 1970, to file with this Court new or amended regulations relating to the subject matter of the action.

It Is Further Ordered that defendants shall submit such proposed regulations within 45 days following any order of the Supreme Court dismissing their appeal or affirming the judgment.

Dated: Aug. 11, 1970

Ben C. Duniway
United States Circuit Judge
Alfonso J. Zirpoli
United States District Judge
Albert C. Wollenberg
United States District Judge

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Aug. 14, 1970
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Supreme Court, U.S.
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# In the Supreme Court

OF THE

# United States

OCTOBER TERM 1970

70-9

No. 582

THOMAS C. LYNCH, et al., *Appellants*

vs.

ROBERT O. GILMORE, JR., et al., *Appellees*

**On Appeal from the United States District Court for the Northern District of California**

## JURISDICTIONAL STATEMENT

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# In the Supreme Court

OF THE

# United States

OCTOBER TERM 1970

No.

THOMAS C. LYNCH, et al.,
*Appellants,*

vs.

ROBERT O. GILMORE, JR., et al.,
*Appellees.*

**On Appeal from the United States District Court for the Northern District of California**

## JURISDICTIONAL STATEMENT

Appellants appeal from the judgment and order of the specially constituted United States District Court for the Northern District of California. Appellants submit this statement to demonstrate that this Court has jurisdiction of the appeal and that substantial constitutional questions are presented.

### OPINION BELOW

The Opinion of the United States District Court for the Northern District of California is unreported. A copy of the opinion granting the injunction is attached hereto as Appendix A.

## JURISDICTION

This suit was brought on behalf of appellees and all other indigent inmates of California correctional institutions for injunctive and declaratory relief under the authority of Title 42, United States Code, section 1983 and Title 28, United States Code, sections 1343(3) and (4), 2201 and 2281 to declare, inter alia, that California Department of Corrections Administrative Manual, Paragraphs 330.041 and 330.042 are in violation of the United States Constitution and to enjoin appellants from enforcing said regulations against appellees and the class they represent on the ground that the regulations violate their rights under the Fourteenth Amendment to the United States Constitution.

The order of the court below granting an injunction against enforcement of the regulations was entered on May 28, 1970. Notice of appeal to this Court was filed in the United States District Court for the Northern District of California on June 25, 1970. A copy of the Notice of Appeal is attached hereto as Appendix B.

The action was originally heard before a single judge of the District Court. Plaintiffs (appellees herein) moved for the convening of a three-judge district court pursuant to Title 28, United States Code, sections 2281 and 2284. The motion was denied, by amended order filed July 6, 1967, on the ground that the complaint did not raise substantial questions of federal law. Pursuant to Title 28, United States Code, section 1292(b), a special appeal was taken to the

Court of Appeals for the Ninth Circuit, the sole issue being whether one or more issues raised by the complaint were required to be heard and determined by a court of three judges. In an opinion filed August 16, 1968, the Court of Appeals answered that question in the affirmative, reversing the order of the District Court. The opinion of the Court of Appeals is reported as *Gilmore v. Lynch*, 400 F.2d 228. This Court denied certiorari. 393 U.S. 1092 (1969). The original order of the District Court denying the motion to convene a three-judge district court is printed as Exhibit B to the above petition for certiorari (No. 626, O.T. 1968), as is the opinion of the Court of Appeals.

The question of the necessity that the issues be heard and determined by a three-judge district court has thus been heretofore litigated. The jurisdiction of the three-judge court having been established, the jurisdiction of the Supreme Court to review the decision of the District Court by direct appeal is conferred by Title 28, United States Code, sections 1253 and 2101(b). The following decisions sustain the jurisdiction of this Court to review the judgment on direct appeal: *United States v. Georgia Public Social Services Comm'n*, 371 U.S. 285, 287 (1963); *Florida Lime and Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73, 75-76 (1960).

## REGULATIONS INVOLVED

California Department of Corrections Administrative Manual Paragraphs 330.041 and 330.042 provide:

330.041

There shall be established in each institution a standard set of basic codes and references which shall consist of and be limited to:

1. The California Penal Code
2. The California Welfare and Institutions Code
3. The California Health and Safety Code
4. The California Vehicle Code
5. The United States and California Constitutions
6. A recognized law dictionary (such as Black's)
7. Witkin's California Criminal Procedures (Bender Moss Co.)
8. Subscription to California Weekly Digest
9. California Rules of Court
10. Rules of United States Court of Appeals (Ninth Circuit)
11. *Rules of United States Supreme Court*

330.042

Sufficient copies will be maintained to provide reasonable access on not less than a weekly basis.

## QUESTION PRESENTED

Does a state have an affirmative federal constitutional duty to furnish prison inmates with extensive law libraries or, alternatively, to provide inmates with professional or quasi-professional legal assistance?

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## STATEMENT OF THE CASE

Appellees, indigent inmates of California correctional institutions, brought a class action on behalf of themselves and all other indigent inmates. There were numerous claims for relief raised in the complaint, but the only one relevant to the instant appeal was the claim of unconstitutionality of new regulations establishing uniform law libraries for each institution. The effect of establishing a standardized list of lawbooks for each institution would have been to establish law libraries in some institutions, expand existing libraries in others, and contract existing libraries in two other institutions through removal of books not on the list.[1] It was the threatened removal of existing lawbooks from two institutions which was asserted to be unconstitutional.

The District Court held that the regulations complained of violated prisoners' rights to reasonable access to the courts and equal protection of the laws. An injunction against enforcement of the regulations was issued, and defendants were ordered to draft and

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[1]The regulations in question have never been fully implemented, in that no books have been removed from prison law libraries pending final disposition of the lawsuit.

submit for the court's approval by September 1, 1970,[2] new regulations either greatly expanding the contents of prison law libraries or providing for the assistance to inmates of attorneys or law students."

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## THE QUESTION IS SUBSTANTIAL

### STATE PRISONS HAVE NO CONSTITUTIONAL OBLIGATION TO PROVIDE INMATES WITH EITHER EXTENSIVE LAW LIBRARIES OR PROFESSIONAL OR QUASI-PROFESSIONAL LEGAL ASSISTANCE

#### 1. The Decision Below Conflicts with Every Federal and State Decision on the Subject.

The District Court held that state prison officials are under an affirmative constitutional duty to provide inmates in their charge with either extensive law library facilities or the professional assistance of attorneys or law students. This holding conflicts directly with every other federal and state decision on the subject, each of which has held that prison officials have no duty to furnish inmates with any lawbooks or legal materials whatever. These cases are: *Hatfield v. Bailleaux*, 290 F.2d 632 (9th Cir.), *cert. denied*, 368 U.S. 862 (1961); *U.S. ex rel. Stuart v. Yeager*, 293 F. Supp. 1079 (D.N.J. 1968); *Coonts v. Wainwright*, 282 F. Supp. 893 (N.D. Fla. 1968); *Roberts v. Pepersack*, 256 F. Supp. 415, 433-34 (D. Md. 1966); *Johnson v. Avery*, 252 F. Supp. 783, 787 (M.D. Tenn.

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[2]By order of the District Court filed August 14, 1970, the original order, insofar as it required defendants to submit new regulations, was stayed, upon the timely filing of the instant Jurisdictional Statement, until 45 days following any order of this Court dismissing the instant appeal or affirming the judgment.

1966), *rev'd on other grounds,* 382 F.2d 353 (6th Cir. 1967), *judgment of the Court of Appeals rev'd on other grounds,* 393 U.S. 483 (1969); *U.S. ex rel. Wakeley v. Pennsylvania,* 247 F. Supp. 7 (E.D. Pa. 1965); *Barber v. Page,* 239 F. Supp. 265 (E.D. Okla. 1965), *rev'd on other grounds,* 390 U.S. 719 (1968); *Bolden v. Pegelow,* 218 F. Supp. 152, 154 (E.D. Va. 1963) (dealing with inmates of federal institution); *In re Allison,* 66 Cal.2d 282, 290, 425 P.2d 193, 57 Cal. Rptr. 593 (1967); *In re Schoengarth,* 66 Cal.2d 295, 305, 425 P.2d 200, 57 Cal.Rptr. 600 (1967).[3] *See also Lee v. Tahash,* 352 F.2d 970, 973-74 (8th Cir. 1965); *Austin v. Harris,* 226 F. Supp. 304, 307 (W.D. Mo. 1964). *Cf. U.S. ex rel. Mayberry v. Prasse,* 225 F. Supp. 752 (E.D. Pa. 1963).

The decision of the District Court thus conflicts fundamentally with a decision of the Court of Appeals for the Ninth Circuit (in which the court below is located) and with decisions of district courts in the Third, Fourth, Fifth, Sixth, and Tenth Circuits. It may not be reconciled with principles set forth in decisions of the Court of Appeals for the Eighth Circuit and a district court within that Circuit. And it directly conflicts with decisions of the California Supreme Court. The very existence of such a patent conflict itself demands decision by this Court and demonstrates that the question presented is indeed substantial. If the decision below is allowed to stand

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[3]The issue was recently raised again in the California Supreme Court, which declined to rule on the sufficiency of prison law libraries until after the determination of the instant case. *In re Harrell,* 2 Cal.3d 675, 695, ___ P.2d ___, ___ Cal.Rptr. ___ (1970).

without plenary review by this Court, California, alone among American jurisdictions, will be deemed obliged by the federal constitution to furnish inmates with large and expensive law libraries or alternative legal services. No such obligation will be imposed on the prison officials of any other jurisdiction, including the others within the Ninth Circuit. Such an anomaly would be intolerable. The need for uniformity of constitutional interpretation throughout the land demands plenary consideration by this Court of the instant appeal.

**2. Neither the Equal Protection Clause Nor the Right of Prison Inmates to Reasonable Access to the Courts Compels Prison Administrators to Furnish Inmates with Extensive Law Libraries or Alternative Legal Assistance.**

The ruling of the District Court was based upon the proposition that failure on the part of appellants to provide prison inmates with law libraries containing such items as federal and state case reports and annotated state codes impaired inmates' right of reasonable access to the courts and denied indigent inmates equal protection of the laws vis-a-vis non-indigents. The conclusion that both constitutional rights were denied is based upon the essential proposition that use of extensive law libraries (or, alternatively, the availability of professional or quasi-professional legal services) is necessary to enable an inmate to get a fair hearing on his contentions of denial of federal rights, presented through habeas corpus petitions or Civil Rights Act complaints. Appellants challenge this essential proposition.

"Access to the courts" has been defined (a definition not challenged by the District Court) as:

> "[T]he opportunity to prepare, serve and file whatever pleadings or other documents are necessary or appropriate in order to commence or prosecute court proceedings affecting one's personal liberty, or to assert and sustain a defense therein, and to send and receive communications to and from judges, courts and lawyers concerning such matters." *Hatfield v. Bailleaux, supra,* 290 F.2d at 637.

As so defined, "access to the courts" clearly does not embrace access to an extensive law library.

The opinion of the District Court considers and rejects the long-accepted proposition that a habeas corpus petition (or Civil Rights Act complaint) need only set forth the facts upon which the claim for relief is based. Two Justices of this Court have recognized this proposition:

> "Habeas corpus petitions, as the majority notes, are relatively easy to prepare; they need only set out the facts giving rise to a claim for relief and the judge will apply the law, appointing a lawyer for the prisoner and giving him a hearing when appropriate." *Johnson v. Avery,* 393 U.S. 483, 500 (1969) (dissenting opinion of Mr. Justice White, joined by Mr. Justice Black).

The District Court bases its rejection of this proposition in part upon the undoubted fact that lawyers cite legal authority in preparing or responding to petitions for writs of habeas corpus.

> "When the Return is filed, it is never without abundant citations to legal authority, and a proper traverse must take cognizance of these points. No attorney filing a habeas petition omits a statement of points and authorities, and neither does the State's attorney in responding to one." Appendix A, p. ix.

This observation misses the point. The convict filing a habeas corpus petition cannot be, and is not, expected to discuss, or even to understand, the law. The habeas petition, in its early stages, should not be tested in the crucible of an adversary proceeding. Its function should be solely to bring to the attention of the courts the factual claims upon which the convict bases his contention that he is being illegally treated. The attorney for the respondent may, and commonly does, point out authorities tending to show that a given petition does not state grounds for relief. His role in this regard is primarily to assist the court. If the judge concludes that an adversary determination of questions of law or fact is necessary for proper adjudication of the inmate's claim, he will appoint an attorney for him.

Lawbooks are the tools of the lawyer's trade. Written by lawyers for lawyers, they are all but impenetrable to the layman. Case reports, in particular, are beyond the ability of all but a few convicts to use effectively. While it is the policy of California to give inmates access to lawbooks, we suggest that their value has been grossly overestimated by the District Court. Indeed, to the extent to which access to ex-

tensive collections of lawbooks encourages convicts to incorporate in their habeas petitions voluminous, irrelevant and confusing citations, they may even impede judicial consideration of an inmate's factual contentions.

As an additional rationale for its decision, the District Court states that "A prisoner should know the rules concerning venue, jurisdiction, exhaustion of remedies, and proper parties respondent." This rationale does not withstand analysis. The complete record in the instant case includes copies of habeas corpus forms for federal and state courts which are available free of charge to all California state prisoners. Copies of the same forms were lodged with this Court by the People of the State of California in connection with their amicus curiae brief in the case of *Johnson v. Avery, supra,* O.T. 1968, No. 40, and, absent special request, we will not burden the files of this Court by lodging duplicates in connection with the instant appeal. These forms consist of detailed questionnaires designed to elicit from the petitioner the basic facts needed to determine the merits of his claim, including the question of whether he has exhausted state remedies. Because of the comprehensiveness of these forms, federal district courts, at least in the Ninth Circuit, have been given discretion to disregard legal arguments not appearing on the forms. *Hooker v. United States District Court, Central District of California,* 380 F.2d 5 (9th Cir. 1967). While the forms do not expressly instruct the petitioner as to the District in which he should file his

petition, or that the warden or superintendent of the institution in which he is confined should technically be named as respondent, it has been our experience (and one not challenged by the District Court) that prisoners have little difficulty ascertaining these facts.

Moreover, the possibility that the lawbooks provided inmates under the regulation in question may not fully apprise them of the rules of jurisdiction, venue and proper parties respondent cannot justify the action taken by the District Court. These rules could be easily supplied to inmates by simply adding to the list of prison lawbooks a copy of Title 28 of the United States Code, in unannotated form, and a copy of the Federal Rules of Civil Procedure (for Civil Rights Act complaints). Yet the District Court has not indicated that it would accept such a simple augmentation of the law library lists. Instead, the District Court appears to have ruled that appellants must provide numerous complete sets of case reports, which have little or no value in apprising inmates of the "rules concerning venue, jurisdiction, exhaustion of remedies, and proper parties respondent."

But if it be assumed that some lawbooks are necessary to preserve a prison inmate's right of reasonable access to the courts, we submit that the lawbooks furnished under the regulation at issue are more than adequate to the task. Under the existing regulations, prisoners are given weekly access to a library containing the wording of the statutes under which they were convicted, considerable procedural information, a

most helpful and well-recognized textbook (WITKIN, CRIMINAL PROCEDURE), which, with pocket parts and supplements, summarizes the law of greatest interest to California prisoners, and a periodical (the *Weekly Law Digest*, designated in the regulation as the California Weekly Digest) which informs them of significant recent cases which may be relevant to the facts of each individual's case. These publications are much more easily understood by laymen than are case reports, and thus much more helpful to inmates in selecting which facts of their cases to present to the courts.

In sum, bearing in mind that a proper habeas corpus or Civil Rights Act complaint need merely contain a clear and concise statement of the facts upon which a claim for relief is based, lawbooks may be a hindrance and are rarely a help to inmates seeking judicial relief. In no event may they be accurately characterized as necessary to enable an inmate to gain access to the courts.

The equal protection theory employed by the District Court is based upon the premise that lawbooks are necessary to equalize the positions of the indigent and the affluent inmate, the former allegedly being disadvantaged vis-a-vis the latter, who is able to retain counsel. This theory proceeds upon the same unsound assumption—that extensive law library facilities are necessary to enable a convict to secure access to the courts. The equal protection claim is thus a variant of the "reasonable access to the courts" argument, and

falls because of the same infirmity in its basic premise.

The same principles supporting the conclusion that use of extensive law library facilities are not needed to vindicate convicts' rights either to equal protection or to reasonable access to the courts, demonstrate that the services of lawyers or law students are likewise unnecessary for the same purpose. The requirements for placing inmates' claims before the courts are so simple and easily met—particularly in light of the availability of prison writ-writers under the decision of this Court in *Johnson v. Avery, supra*—that no professional assistance in the preparation of habeas corpus petitions and Civil Rights Act complaints is required. The availability of appointed counsel when a facially meritorious petition is filed fully protects convicts' right to their day in court.

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## CONCLUSION

The District Court has ruled that state prison officials are obliged under the federal constitution to furnish inmates not merely with food, shelter, and clothing, but with extensive law libraries as well. Lawbooks have thus been equated with the necessities of life. The decision is not only contrary to every authority; it is fundamentally unsound. It is also pernicious, in that it will oblige prison administrations to expend their limited funds uselessly on lawbooks at the expense of far more desirable rehabilitative projects.

For the reasons stated above, a substantial question under the Constitution is presented in this case. Jurisdiction should be noted.

August 24, 1970.

Respectfully submitted,

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**(Appendices A and B Follow)**

## Appendix A

In the United States District Court for the Northern District of California

Case No. 45878*

Robert O. Gilmore, Jr., John Van Geldern, et al.,
Plaintiffs,

vs.

Thomas C. Lynch, Attorney General of California, et al.,
Defendants.

### ORDER GRANTING RELIEF

Before: DUNIWAY, U. S. Circuit Judge, and ZIRPOLI and WOLLENBERG, U.S. District Judges.

Plaintiffs herein are prisoners at various facilities administered by the California Department of Corrections. They challenge certain rules and regulations of the Department concerning inmate access to law books, legal materials, and lay assistance in preparing prisoner writs and complaints. Also attacked are pro-

*This case has been consolidated with the following cases: 46297, 46298, 46299, 47015, 47111, 45749, 48232, 48351, 48352, 48353, 48354, 48355, 48361, 48362, 48607, 48858, 48974, 49073, 49090, 49856, 49942, 49943, 50024, 50775, and 50855.

cedures of the California State Law Library regarding circulation of legal materials to prisoners. Since plaintiffs ask that the enforcement of these rules be enjoined on constitutional grounds, and since the rules are of state-wide applicability, a three judge court was mandated by the Court of Appeals for this Circuit. *Gilmore v. Lynch,* 400 F.2d 228 (1968); cert. den. *Lynch v. Gilmore,* 393 U.S. 1092 (1968); 28 U.S.C. § 2281; *Okla. Gas Co. v. Russell,* 261 U.S. 290 (1923); *Ala. Comm. v. Sthn. Ry. Co.,* 341 U.S. 341, 343 (footnote #3) (1951).

Some of the prison rules originally brought into question by plaintiffs have since been suppressed or amended in response to changed institutional situations and in light of recent court decisions.[1] Others remain, however, and their constitutionality is now before the Court. More specifically, the Court is asked to pass on Prison Regulation 330.041, which establishes an exclusive list of "basic codes and references" for prison use,[2] and Director's Rule 2602, which,

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[1]Most noteworthy among these decisions is *Johnson v. Avery,* 393 U.S. 483 (1969).

Prisoners who are financially capable of doing so may now purchase law books and other materials for their personal use. Transmittal Letter No. 5/69, dated May 9, 1969, and signed by R. K. Procuper, Director of Corrections. Similarly, more articulate and better educated inmates may assist others in the preparation of legal papers. Director's Rule D2602, as modified.

[2]The Department of Corrections Administrative Manual sets forth the text of Regulation 330.041 as follows:

> "There shall be established in each institution a standard set of basic codes and references which shall consist of and be limited to:
>
> (1) The California Penal Code
> (2) The California Welfare and Institutions Code
> (3) The California Health and Safety Code

among other provisions, requires that all legal papers remain in the possession of the inmate to whom they pertain.[3] The State Library procedures herein questioned also set up a restricted list of law books available for prison circulations. Evidently, only one copy of each of the listed works is set aside for inmate borrowers, and even a great many of these have been lost or stolen over the years.[4]

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(4) The California Vehicle Code
(5) The United States and California Constitutions
(6) A recognized law dictionary (such as Black's)
(7) Witkin's California Criminal Procedures (Bender Moss Co.)
(8) Subscription to California Weekly Digest
(9) California Rules of Court
(10) Rules of United States Court of Appeals (Ninth Circuit)
(11) Rules of United States Supreme Court."

The above regulation is to be read in conjunction with the Director's Transmittal Letter 26/66, which, in discussing the regulation, adds that "all existing law books and references in inmate law libraries not consistent with this section are to be removed and destroyed." By informal stipulation of the parties, this directive of the Transmittal Letter has not been enforced during the pendency of this action.

[3]D2602 reads as follows:

"One inmate may assist another inmate in the preparation of legal documents, but may not receive remuneration therefor. Remuneration is not limited to present benefits, but includes future as well as past benefits. A room or rooms may be designated by the Warden or Superintendent for this purpose. All briefs, petitions and other legal papers must be and remain in the possession of the inmate to whom they pertain."

[4]The sets available from the State Law Library for circulation to prison inmates are the California Appellate Reports (1st and 2d); California Reports (1st and 2d); California Reporter; Pacific Reporter (1st and 2d); Federal Reporter (1st and 2d); Federal Rules Decisions; Federal Supplement; United States Reports; Supreme Court Reporter; U.S. Supreme Court Reports, Lawyers' Edition (1st and 2d); California Codes (pamphlet editions only); and California Statutes and Amendments to the Codes.

The apparent completeness of the above list is illusory in view of the facts alluded to above, i.e., that there is only one copy of

The arguments put forward by each side are simply summarized. Plaintiffs allege that the above rules and regulations, taken individually, are arbitrary and unreasonable, and that taken collectively they deny indigent prisoners, and their jailhouse lawyers, the legal expertise which is necessary if access to the courts by these persons is to be in any way meaningful. Defendants answer with a citation to certain dicta in *Hatfield v. Bailleaux*, 290 F.2d 632 (1961), a decision by a three-judge court of this Circuit. While affirming the right of the incarcerated not to be unreasonably hindered in making use of the courts, *Hatfield* added that "[s]tate authorities have no obligation . . . to provide library facilities and an opportunity for their use to enable an inmate to search for legal loopholes in the judgment and sentence under which he is held, or to perform services which only a lawyer is trained to perform". *Id.* at 640.[5] Defendants

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each of the above sets available for circulation to all California prisoners (of which there are some 30,000), and that a great many volumes have been lost or stolen and have not been replaced. Ninety-three volumes of the United States Reports, for example, are quite unavailable to any inmate borrower. The borrower's ability to seek out parallel citations in other volumes is hindered, to say the least; by the lack of any lists of parallel citations in either the prisons or on the State Law Library Prison List.

[5]Hatfield passed upon the constitutional acceptability of certain Oregon prison regulations which were, for the most part, "time, place and manner" restrictions on access to legal materials, rather than restrictions on the *kinds* of legal materials available to indigents. The regulations in *Hatfield* barred access to law books for prisoners in temporary isolation, and limited the free time which prisoners could spend on legal research. The Court noted that periods of isolation in no case before it exceeded 27 days, and found the other rules reasonable in light of the prisons' interest in barring the practice of jailhouse law. The latter consideration is, of course, no longer cognizable under *Johnson v. Avery, supra* note 1.

conclude from this that the provision of law books in prison libraries is a matter of governmental grace, i.e., a privilege to be withheld or conditioned as the State chooses. Alternatively, the Attorney General argues that the regulations here under attack are defensible in light of certain legitimate state interests. He cites the need for "economy and standardization" as justifying the restricted prison book lists. The rule barring retention by jailhouse lawyers of papers pertaining to the affairs of others is justified by the need to deny such "lawyers" the tools by which they might coerce payment for their services. Finally, the procedures of the State Library are said to be aimed at problems of loss and mutilation occasioned by inmate borrowers.

The dual thrust of defendants' argument is an implicit recognition that labelling prison libraries a "privilege" and not a "right" will not forestall judicial inquiry into the conditions upon which the "privilege" is granted or withheld. See the oft-cited article by Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 Harv. L.R. 1439 (1968). The prisoner is no longer regarded as a temporary "slave of the State" [*Ruffin v. Commonwealth*, 62 Va. 790 (1871)], and prison officials are not now such masters of their own domain as to be free of the restraints of constitutional reasonability. *Coffin v. Reichard*, 143 F.2d 443 (1944); *Jackson v. Godwin*, 400 F.2d 529 (1960). The Courts have used various linguistic formulae to describe the limits to prison rule-making authority, sometimes speak-

ing of constitutional rights which are so pre-eminent that they cannot be alienated no matter what the needs of penal administration might be, and at other times avoiding regulations which confer or withhold "privileges" so arbitrarily as to constitute unequal protection of the laws to certain classes of prisoners. *Pierce v. LaVallee,* 293 F.2d 233 (1961); *Jackson v. Godwin, cit. supra.* In most cases, however, the basic test remains the same: the asserted interest of the State in enforcing its rule is balanced against the claimed right of the prisoner and the degree to which it has been infringed by the challenged rule. Most prison regulations reflect the clear exigencies of a penal situation and the courts are justifiably reluctant to question their wisdom. *Austin v. Harris,* 226 F.Supp. 304 (1964). Other rules, though, touch upon interests of which the judiciary is more solicitous, and the burden of justifying these regulations is especially heavy, comparable to the "overwhelming state interest" required by *Shapiro v. Thompson,* 394 U.S. 618 (1969).[6]

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[6]Thus, the right of a prisoner not to be subjected to racial discrimination is so paramount that it will prevail over even a strong showing that racial segregation of inmates tends to lessen intramural strife and disciplinary problems. Also most closely scrutinized will be charges of religious persecution. *Pierce v. LaVallee,* and *Jackson v. Godwin, cit. supra.*

Statements of the general rule differ in their tone, but nonetheless make it clear that prison rules must pass the basic test of due process reasonability, with that test being more or less stringent according to the character of the right taken from the prisoner. Thus: "The general rule is that under ordinary circumstances prison authorities have a large discretion as to matters of prison administration and that a federal court will not grant relief to a state prisoner complaining against his warden because of the latter's discretionary orders. There are exceptional cases as when a

The rights invoked by plaintiffs herein have been given considerable emphasis by past and present case law. Reasonable access to the courts is a constitutional imperative which has been held to prevail against a variety of state interests.[7] Similarly, the right under the equal protection clause of the indigent and uneducated prisoner to the tools necessary to receive adequate hearing in the courts has received special re-enforcement by the federal courts in recent decades. *Gideon v. Wainwright,* 372 U.S. 335 (1963); *Douglas v. California,* 372 U.S. 353 (1963); *Griffin v. Illinois,* 351 U.S. 12 (1956); *Richards v. Townsend,* 303 F. Supp. 793 (1969).

Plaintiffs argue, then, that at stake here are two principles of recognized importance, i.e. their rights to reasonable access to the courts, and to equal protection of the laws. But the simple invocation of these phrases will not carry the day for plaintiffs, for they must further show that these rights are not only affected by the regulations under attack, but are in-

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substantive right is involved." *Nolan v. Scafati,* 38 U.S.L.W. 2340 (1969). Also: "[C]onviction and incarceration deprive [one] only of such liberties as the law has ordained he shall suffer for his transgressions . . . . A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law . . . . the acts of which appellant complains . . . were not necessary for the proper punishment of an insubordinate inmate to secure his submission and obedience to its reasonable rules and regulations." *Coffin v. Reichard, cit. supra* at pp. 444-45.

[7]One of the earliest enunciations of the rule was in *Ex parte Hull,* 312 U.S. 546 (1941), which, though admitting the legitimacy of official desires to ensure that inmate petitions were "properly drawn", nonetheless voided a prison regulation which required all habeas petitions to be reviewed by prison authorities before being filed.

fringed to such a degree as to render the justifications offered by the State inadequate and unreasonable as a matter of law. Here, the State alleges that the infringement is minimal, and that its interests are great, and this claim must now be weighed by the Court.

The basic codes and references authorized for prison use under Prison Regulation 300.041 would offer meager fare to a criminal lawyer. There are no annotated codes, no United States Reports, no federal reports, no California Reports. There are unannotated versions of four of California's codes, but there is no copy of any part of the United States Code. There are copies of the rules of the California and certain federal courts, but there is no edition of the Rules of the Federal District Courts which receive a great many of the habeas corpus petitions, and all of the civil rights petitions, filed by California prisoners. There is one copy of Witkin's treatise on California criminal procedure, but there are no other law books or journals, such as "U.S. Law Week", on the list.

The State answers that the needs of a criminal lawyer are not comparable to those of an inmate, since no legal expertise is required of a prisoner asking for judicial relief. All the convicted felon need do is file a brief statement of the facts of his case. If these facts state a colorable ground for relief, an attorney will be appointed to argue the case. There is no need, it is claimed, for legal arguments or citations in a collateral attack upon a judgment of conviction. See 28 U.S.C. §2242, and Sokol, *Federal Habeas Corpus,* pp. 92-94 (1969) (Second Edition).

The wording of the statute and the wishes of the scholars notwithstanding, this Court takes notice that more than simple "facts" are needed in order to file an adequate petition for relief by way of habeas corpus. A prisoner should know the rules concerning venue, jurisdiction, exhaustion of remedies, and proper parties respondent. He should know *which* facts are legally significant, and merit presentation to the Court, and which are irrelevant or confusing. When the Return is filed, it is never without abundant citations to legal authority, and a proper traverse must take cognizance of these points. No attorney filing a habeas petition omits a statement of points and authorities, and neither does the State's attorney in responding to one. *Johnson v. Avery, supra* note 1, has explicity recognized the relevance of legal expertise to the filing of petitions in habeas corpus. "For all practical purposes, if [illiterate and poorly educated] prisoners cannot have the assistance of a 'jailhouse lawyer', their possibly valid constitutional claims will never be heard in any court." *Id.* at 487, citing the lower court decision at 252 F.Supp. 783, 784 (1966). The initial burden of persuading a judge that an evidentiary hearing is necessary lies with the prisoner; given the hundreds of petitions with which the courts are flooded, this burden is a heavy one which only "a few old hands or exceptionally gifted prisoners" can carry. *Id.* at 488.

"Access to the courts", then, is a larger concept than that put forward by the State. It encompasses all the means a defendant or petitioner might require to get

a fair hearing from the judiciary on all charges brought against him or grievances alleged by him. In some contexts this has been interpreted to require court-appointed counsel for indigents. *Gideon v. Wainwright* and *Douglas v. California, cit. supra.* In other situations, the State might be obligated to provide free transcripts, process-serving facilities, and *in forma pauperis* filing privileges. Indgients asking for habeas corpus relief are not invariably entitled to court-appointed counsel [*Eskridge v. Rhay,* 345 F.2d 778 (1965)], but *Johnson v. Avery, supra,* note 1, makes it clear that some provision must be made to ensure that prisoners have the assistance necessary to file petitions and complaints which will in fact be fully considered by the courts.

The alternatives open to the State are legion. It might authorize Public Defenders to help inmates in collateral proceedings. Or it could institute programs whereby law students and professors could aid the indigent convict.[8] The solution thus-far chosen by California is patch-work: the affluent are guaranteed the right to communicate with private counsel [Calif. Pen. Cde. §2600(2)], and to buy personal law books without restriction save as to space limitations.[9] The indigent, however, are relegated to seeking out fellow inmates with legal knowledge, and to the resources of the prison law library, the contents of which are severely limited under the regulation now under at-

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[8]For further suggestions, see Larsen, Spector, and Krause, *Prison Writ-Writing: Three Essays,* 56 Calif. L. Rev. 342 (1968).

[9]See note 1, *supra.*

tack. The prison libraries are to some extent backed up by the State Law Library. However, that institution has itself composed a restricted list, also under challenge here, which shares the weaknesses of the Department of Corrections list described above in that many works are not on the list, and even the books listed are apt to be missing.

Thus, while recent reforms have immeasurably aided the more affluent of California's prisoners in securing access to legal advice and the courts, the lot of the indigent inmate has been somewhat neglected. This neglect of one class, when contrasted with the attention paid to the rights of others, raises serious equal protection questions. Further, for the reasons above stated, plaintiffs' very clearly defined right to reasonable access to the courts is seriously infringed by the highly restricted nature of the book list set forth in Prison Regulation 300.041, even if that list is theoretically supplemented by the State Law Library.

The countervailing considerations offered by the State do not provide sufficient justification for the regulation. The Attorney General has cited the need for economy and standardization in the prisons, but such asserted interests were considered and found insufficient in nearly all the indigent rights cases cited above. In truth, the governmental interests advanced by the defendants in those cases seem much stronger than the considerations advanced by the Attorney General here. The admittedly substantial disciplinary problems of newly integrated prisons were held to be

no justification for continuing segregation in other prisons. The fact that a religion allegedly preached race hatred did not make right official attempts to bar adherents of that religion from holding chapel services in prison. *Jackson v. Godwin,* and *Pierce v. LaVallee, cit. supra; Lee v. Washington,* 390 U.S. 333 (1968); *Fulwood v. Clemmer,* 206 F.Supp. 370 (1962). Judge Blackmun, when offered similar justifications for the use of the strap in Arkansas prisons answered simply and effectively that "[w]e are not convinced . . . by any suggestion that the State needs this tool for disciplinary purposes and is too poor to provide other accepted means of prisoner regulation. Humane considerations and constitutional requirements are not, in this day, to be measured or limited by dollar considerations or by the thickness of the prisoner's clothing." *Jackson v. Bishop,* 404 F.2d 571, 580 (1968).[10] Just as the harshness of Arkansas prison whips was not deemed mitigated by the provision that all prisoners be clothed when punished, neither is the

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[10] *Johnson v. Avery, supra* note 1 at p. 488, offers another example of a judicial balancing of 'indisputable' State interests against clear inmate rights, and a finding that the latter must prevail:

> "It is indisputable that prison 'writ-writers' like petitioner are sometimes a menace to prison discipline and that their petitions are often so unskillful as to be a burden on the courts which receive them. But, as this Court held in *Ex parte Hull* [*supra* note 7], in declaring invalid a state prison regulation which required that prisoners' legal pleadings be screened by state officials:
>
> "'The considerations that prompted [the regulations'] formulation are not without merit, but the state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus.'"

fundamental inadequacy of the restricted book list here relieved by the fact that California authorities have succeeded in "standardizing" the law libraries in all of that State's institutions.

The relief to be fashioned by the Court in the instant case presents some problem. On the one hand, a court of equity is traditionally given great discretion in such matters; on the other, judges have always feared to rush in where correctional officials are presumed more fit to tread. Balancing both these considerations, the Court will enjoin the enforcement of Prison Regulation 330.041, but it will not itself undertake the task of devising another system whereby indigent prisoners are given adequate means of obtaining legal expertise necessary to obtain judicial consideration of alleged grievances cognizable by the courts. The Department of Corrections will, therefore, decide whether to expand the present list of basic codes and references in the manner suggested by this opinion, or whether to adopt some new method of satisfying the legal needs of its charges.

The court is also asked to enjoin the enforcement restrictions by the State Law Library on prisoner use of its collections. This we will decline to do. Assuming that the Department provides adequately for inmate legal needs, the back-stopping function now performed by the State Library will become superfluous, and the Library's need to cope with the real problems posed by serving a prison population would constitute sufficient justification for the rules which are here attacked.

There remains for this Court's consideration only Director's Rule 2602, which provides that "[O]ne inmate may assist another inmate in the preparation of legal documents, but . . . all briefs, petitions and other legal papers must be and remain in the possession of the inmate to whom they pertain." Plaintiffs allege that this rule prevents meaningful mutual assistance, in that it requires in effect that all writing take place in mess halls, where such is impossible, or in libraries, where access is limited and talking is banned. The Court notes, however, that the rule can be easily interpreted to bar only storage of completed legal papers in the cells of persons to whom they do not pertain. Thus, the "jailhouse lawyer" could compose such documents in his own cell, but once they are completed he must deliver them to the possession of the "client", without any threats to retain them until payment is forthcoming. Assuming such an interpretation of Director's Rule 2602, the Court finds it constitutionally valid.

Accordingly, It Is Hereby Ordered that Defendants be and are enjoined from enforcing Prison Regulation 330.041. Defendants are further Ordered, on or before September 1, to file with this Court new or amended regulations which accord with the principles expressed herein. If plaintiffs desire oral argument on the adequacy of such new or amended regulations, they will properly move for a hearing thereon. Otherwise, the Court will entertain written briefs concerning the proposed regulations, and will make such further decision as it deems appropriate. In the interim, no law

books, codes, or references now in prison libraries will be destroyed or removed because they are not on the basic reference list promulgated by Prison Regulation 300.041.

It Is So Ordered.

Dated: May 26, 1970.

Ben C. Duniway,
United States Circuit Judge,

Alfonso J. Zirpoli,
United States District Judge,

Albert C. Wollenberg,
United States District Judge.

Original Filed May 28, 1970,
Clerk U.S. Dist. Court, San Francisco, Calif.

## Appendix B

In the United States District Court
Northern District of California

No. 45,878

Robert O. Gilmore, Jr.,
John Van Geldern, et al.,
Plaintiffs,

vs.

Thomas C. Lynch, Attorney
General of California, et al.,
Respondents.

### NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

TO: The Clerk of the above-entitled Court, and to Counsel for Plaintiffs:

Please Take Notice that defendants, and each of them, hereby appeal to the Supreme Court of the United States from that portion of the judgment of this Court, filed May 28, 1970, which enjoins defendants from "enforcing Prison Regulation 330-041."

This appeal is taken under Title 28, United States Code, section 1253.

Dated: June 25, 1970

Thomas C. Lynch, Attorney
General of California

Robert R. Granucci
Deputy Attorney General

George R. Nock
Deputy Attorney General
Attorneys for Defendants-Appellants

Original Filed June 25 1970,
Clerk, U.S. Dist. Court, San Francisco.